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Supreme Court of the United States

OCTOBER TERM, 1957

No. 130

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED, PETITIONERS,

vs.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED MAY 17, 1957
CERTIORARI GRANTED JUNE 17, 1957

No. 12067

IN THE

United States Court of Appeals For the Third Circuit

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED, *Appellees*

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE, *Appellant*

On Appeal From the Judgment of the United States District Court for the Eastern District of Pennsylvania

---

APPENDIX TO BRIEF FOR THE APPELLANT

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IN THE

United States District Court

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 14406

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, *Plaintiffs*

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE, *Defendant*

Docket Entries

10-31-52—Complaint
10-31-52—Summons Exit
10-31-52—Plaintiff's demand for Jury Trial filed
11-21-52—Appearance of Gerald A. Gleeson, Esq., for defendant filed.
12- 1-52—Summons returned, "on November 5, 1952, served United States Attorney and Collector of Internal Revenue and on November 14, 1952 served Attorney General and Commissioner of Internal Revenue by registered mail" and filed.
12-30-52—Stipulation and Order extending time for filing answer to 2-28-53 filed. G.
2-26-53—Answer filed.
10-26-53—Order to place case on Trial list filed.
8-26-55—Stipulation of facts filed.

11- 2-55—Order amending Stipulation of facts filed 11-3-55. Noted and notice mailed. Kr.
12-21-55—Argued sur Stipulation of facts—CAV—Kr.
1- 6-56—Transcript of 12-21-55
1-12-56—Submitted on stipulation of facts—CAV—Kr.
6-25-56—Supplemental stipulation of facts filed.
6-25-56—Second supplemental stipulation of facts filed.
6-29-56—Findings of fact filed.
6-29-56—Opinion, Kraft, J. granting judgment in favor of plaintiff filed. (order to be sub.)
8- 7-56—Judgment in favor of plaintiff and against defendant in the sum of $103,280.84 with interest and costs filed. Noted and notice mailed 8-7-56. Kr.
9-24-56—Defendant's motion to correct docket entry or to extend time for noting appeal, filed. (Copy to Montgomery, McCracken, Walker & Rhoads, Esq.
9-24-56—Copy of Clerk's notice to U. S. Court of Appeals filed.
9-24-56—Clerk of Court extending time for noting appeal to 9-27-56, filed Kraft. 9-26-56. Noted
9-27-56—Defendant's Notice of Appeal filed (Copy to Montgomery, McCracken, Walker & Rhoads, Esq.)
9-27-56—Copy of Clerk's Notice to U. S. Court of Appeals filed.
10-15-56—Record transmitted to U. S. Court of Appeals.

Stipulation of Facts

* * *

(13) Decedent made a separate application for insurance policy No. 4842239 and a separate application for annuity contract No. 30599. Both were made on April 5, 1934 at the same time and through L. J. Santamarie, Insurance Counsellor, of 123 S. Broad Street, Philadelphia, Pa.

(14) Decedent made a separate application for insurance policy No. 4885836 and a separate application for annuity contract No. 31908. Both were made on September 10, 1934 at the same time through L. J. Santamarie,

Insurance Counsellor, of 123 S. Broad Street, Philadelphia, Pa.

(15) Decedent made a separate application for insurance policy No. 2544451 and a separate application for annuity contract No. 020406. Both were made on October 5, 1934 at the same time through L. J. Santamarie, Insurance Counsellor, of 123 S. Broad Street, Philadelphia, Pa.

[Caption Omitted]

Findings of Fact

KRAFT, J.

, 1956

At the trial counsel agreed that the pleadings, stipulation of facts, supplemental stipulation of facts and of testimony, and amended stipulation of facts constituted the record for the determination of this case. From this record the following facts are admitted by the pleadings, stipulated by counsel or found from the stipulated testimony:

1. Plaintiffs are Fidelity-Philadelphia Trust Company, a Pennsylvania corporation, and Robert B. Haines, III, executors under the will of Mary H. Haines, deceased, who died May 7, 1946.

2. Defendant is the Collector of Internal Revenue for the First District of Pennsylvania.

3. Plaintiffs, on August 6, 1947, filed with defendant a federal estate tax return for the estate of Mary H. Haines, deceased, and paid a federal estate tax of $135,739.95.

4. Plaintiffs, on August 6, 1948 paid to defendant a deficiency in federal estate tax assessed against the estate of Mary H. Haines, deceased, in the amount of $97,434.75 with interest thereon of $5,846.09 which deficiency was assessed as a result of an increase by the Commissioner of Internal Revenue of the decedent's taxable estate by $350,057.65 by the inclusion in her gross estate of the

value of three life insurance policies on the life of the decedent as follows:

Policy	Insurer	Amount
4842239	The Mutual Life Insurance Company of New York	$200,020.00
4885836	The Mutual Life Insurance Company of New York	100,028.65
2544451	John Hancock Mutual Life Insurance Company	50,009.00
	Total	$350,057.65

5. On June 23, 1950, plaintiffs filed with defendant their claim for refund of federal estate tax on this decedent's estate in the amount of $97,434.75 (or such other amount as might be legally refundable) with interest, on the ground that the value of the aforesaid policies was not includible in decedent's gross estate.

6. The Commissioner of Internal Revenue, on November 6, 1950, notified plaintiffs of the disallowance of their claim for refund.

7. Plaintiffs brought this suit for refund of federal estate tax on the estate of Mary H. Haines, deceased, in the amount of $97,434.75 with interest paid thereon in the amount of $5,846.09, a total of $103,280.84, plus interest.

8. On April 27, 1934 upon decedent's application and the payment by her of a single premium of $179,358, The Mutual Life Insurance Company of New York issued its insurance policy No. 4842239 in the amount of $200,000 insuring decedent's life.

On the same date the same company issued to decedent its non-refundable annuity contract No. 30599 upon the payment by decedent of a single premium of $40,642. Under the terms of the annuity contract the decedent was to and did receive an annuity of $5,026 per annum during her lifetime.

9. On October 10, 1934 upon decedent's application and the payment by her of a single premium of $90,642, The

Mutual Life Insurance Company of New York issued its insurance policy No. 4885836 in the amount of $100,000 insuring decedent's life.

On the same date the same company, on decedent's application, issued to decedent its non-refundable annuity contract No. 31908 upon payment by decedent of a single premium of $19,358. Under the terms of this annuity contract decedent was to and did receive an annuity of $2,440.64 per annum during her lifetime.

10. On October 15, 1934 upon decedent's application and payment by her of a single premium of $43,491, the John Hancock Mutual Life Insurance Company issued its insurance policy No. 2544451 in the amount of $50,000 insuring decedent's life.

On the same date the same company, on decedent's application, issued to her its non-refundable annuity contract No. 020406 upon the payment by her of a single premium of $10,509. Under the terms of this annuity contract decedent was to and did receive an annuity of $1,295.56 per annum during her lifetime.

11. Neither the annuity contracts nor the applications therefor contained any reference to any of the aforesaid insurance policies. Neither the insurance policies nor the applications therefor contained any reference to any of the aforesaid annuity contracts.

12. Decedent made six separate applications for the respective insurance policies and annuity contracts.

13. The annuity contracts and the annuity payments made to decedent thereunder were not based upon and were in no way dependent on the consideration paid by decedent for any of the insurance policies.

The issuing insurance companies would have issued to decedent or to any other person of her age the annuity contracts which were issued to the decedent for the same premiums which the decedent paid for such annuity contracts without the purchase by decedent or such other person of any life insurance policies.

14. Each of the life insurance policies was issued to the applicant, then aged 76, without medical examination.

15. The insurer would not have issued its policy 4842239 without the purchase by decedent of annuity contract 30599.

16. The insurer would not have issued its policy 4885836 without the purchase by decedent of annuity contract 31908.

17. The insurer would not have issued its policy 2544451 without the purchase by decedent of annuity contract 020406.

18. Following issuance of the annuity contracts, the decedent received the respective annuity payments specified in each until her death. Upon her death all annuity payments under the annuity contracts ceased and such contracts had then no remaining value.

19. If the three insurance policies had not been issued by the respective insurers to the decedent, or, if they had been issued to her but had been surrendered prior to her death, the decedent would nevertheless have received the same annuity payments until her death when the annuity payments would have ceased and the annuity contracts would have then had no remaining value.

20. Both life insurance policies issued by The Mutual Life Insurance Company of New York designated the four named children of the decedent as equal primary beneficiaries and the Fidelity-Philadelphia Trust Company, as trustee under a trust agreement, as contingent beneficiary of the share of any of the decedent's children who predeceased her. The decedent had no beneficial or reversionary interest in the trust or the two life policies issued by this company after July 6, 1938.

21. Pursuant to decedent's written application for the policies, each of the two life policies issued by The Mutual Life Insurance Company of New York contained at and after issue the following provision:

RIGHTS: Anything in this policy to the contrary notwithstanding, prior to the maturity of this policy, the Insured's children Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines jointly, the survivors or survivor, if none of said children be living, then the living children of said children of the Insured, jointly or the survivors or survivor, if none of the children of said children of the Insured be living, then to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured, some of the beneficiaries may, without the consent and to the exclusion of the Insured or any other beneficiary, receive, exercise, and enjoy every benefit, option, right and privilege conferred by this policy or allowed by the Company.

22. The decedent's four children were named as beneficiaries of the life insurance policy issued by John Hancock Mutual Life Insurance Company in which no right to change beneficiaries was reserved to the decedent. The policy, as issued, provided for the payment of the proceeds to the decedent's executors or administrators if her four children predeceased her. The decedent assigned this life policy to Fidelity-Philadelphia Trust Company, trustee, under a trust agreement between her and that company, and then nominated that company as trustee to be contingent beneficiary of this life policy; and on November 22, 1934 the policy was amended so to provide.

23. Under the trust agreement decedent had reserved to herself all benefits, privileges and options available to her under the life insurance policy issued by John Hancock Mutual Life Insurance Company including rights of dividend receipt, assignment and surrender and had also reserved the right to change, amend or revoke the trust agreement. On July 6, 1938 the decedent amended the trust agreement by assigning irrevocably to the trustee for trust purposes all her right, title and interest in this and any other policy subject to the trust agreement and by irrevocably empowering the trustee to exercise and enjoy all options, benefits, rights and privileges under

this and any other policy subject to the trust agreement. By the same amendment the decedent further provided that the trust agreement as so amended was thereafter unalterable and irrevocable. Neither decedent nor her estate had any beneficial or reversionary interest in the trust she created nor any reversionary interest in the life insurance policy issued by John Hancock Mutual Life Insurance Company after July 6, 1938.

24. On March 15, 1935 the decedent's four children filed with the Collector of Internal Revenue a joint Donee's Information Gift Tax Return reporting the receipt by each of them, as gifts from the decedent, of a one-fourth interest by irrevocable assignment in the three life insurance policies.

25. On May 3, 1935 the decedent's one child and on September 19, 1935 the decedent's other three children each filed with the Collector of Internal Revenue an individual Donee's Information Gift Tax Return reporting the receipt by each of them, as gifts from the decedent, of a one-fourth joint interest by irrevocable assignment in each of the three life insurance policies.

26. In 1935 the decedent filed a Federal Gift Tax Return reporting, as gifts, the transfer in 1934 of the three life insurance policies to her children as complete, irrevocable gifts and paid the gift tax thereon.

27. The commissions received by the insurance agent on policies Nos. 4842239 and 4885836 were reported to the issuing company separately from the commissions received by the same agent on the payments for annuity contracts Nos. 30599 and 31908 issued to the decedent by the same company.

28. The premiums received from the decedent by The Mutual Life Insurance Company of New York in payment of insurance policies Nos. 4842239 and 4885836 were entered by that company in accounts which were kept separately from its accounts recording receipt of the payments received by it from decedent for annuity contracts Nos. 30599 and 31908.

29. The reserves that were maintained by The Mutual Life Insurance Company of New York for said insurance policies Nos. 4842239 and 4885836 were separate and different from the reserves maintained by it for the annuity contracts Nos. 30599 and 31908.

30. There was no indebtedness to The Mutual Life Insurance Company of New York on or in respect of policy No. 4842239 on or after its date of issue.

31. There was no indebtedness to The Mutual Life Insurance Company of New York on or in respect of policy No. 4885836 on or after its date of issue.

32. The Mutual Life Insurance Company of New York paid all dividends on insurance policies Nos. 4842239 and 4885836 to the decedent's four children or at their direction.

33. The commission received by the insurance agent for policy No. 2544451 was reported to John Hancock Mutual Life Insurance Company separately from the commission received by the same agent on the payment for annuity contract No. 020406.

34. The premium received from the decedent by John Hancock Mutual Life Insurance Company in payment of insurance policy No. 2544451 was entered by that company in accounts kept separate and apart from its accounts recording receipt of the payment from the decedent in payment of annuity contract No. 020406.

35. The reserves maintained by John Hancock Mutual Life Insurance Company for insurance policy No. 2544451 were separate and different from the reserves maintained by it for annuity contract No. 020406.

36. There was no indebtedness to John Hancock Mutual Life Insurance Company on or in respect of policy No. 2544451 on or after its date of issue.

37. If any or all of three life insurance policies had been surrendered by the owner thereof (whether such owner at the time was the decedent or a donee of the

decedent) to the issuing insurance company at any time after issuance and prior to the decedent's death, the issuing company would have paid such owner the then cash surrender value of such policy and would have cancelled such policy.

38. If insurance policies Nos. 4842239, 4885836 and 2544451 had been surrendered to the respective issuing companies immediately upon issue the respective companies would immediately have paid the following cash surrender values:

Policy Number	Amount
4842239	$164,594.00
4885836	83,180.00
2544451	41,550.00

39. If insurance policy No. 2544451 had been surrendered to the issuing company on July 6, 1938 or between July 6 and July 15, 1938 the company would have paid a cash surrender value of $42,725.

40. Upon surrender to John Hancock Mutual Life Insurance Company of insurance policy No. 2544451 between July 15 and October 15, 1938 that company would have paid a cash surrender value on said policy of $42,837.50.

41. Upon surrender to John Hancock Mutual Life Insurance Company of insurance policy No. 2544451 between May 29, 1944 and June 15, 1944 that company would have paid a cash surrender value on said policy of $45,483.50.

42. If insurance policies Nos. 4842239 and 4885836 had been surrendered to The Mutual Life Insurance Company of New York on July 6, 1938 that company would have paid a cash surrender value for said policies of $171,674 and $86,221, respectively.

43. If the insurance policies had been surrendered to the respective issuing companies at any time after issuance and prior to the decedent's death, the respective companies would have paid the respective cash surrender values at the time of policy surrender.

44. If the insurance policies had been surrendered to the respective issuing companies immediately prior to the decedent's death the respective companies would immediately have paid the following respective cash surrender values:

Policy Number	Amount
4842239	$186,404.00
4885836	93,595.00
2544451	46,250.00

45. After decedent's death the proceeds of the insurance policies were paid to the decedent's four children equally in the following aggregate amounts:

Policy Number	Amount
4842239	$200,020.00
4885836	100,028.65
2544451	50,009.00

46. In order to protect itself in the event the decedent died shortly after purchasing life insurance policy No. 4842239, The Mutual Life Insurance Company of New York required that the aggregate consideration paid by decedent for said insurance policy No. 4842239 and for the aforesaid annuity contract No. 30599 exceed the face amount of said insurance policy. The said company determined that the face amount of said insurance policy No. 4842239 should be 10/11ths of such aggregate consideration. In determining the premium to be paid by decedent for such face amount of insurance the said company applied its regular insurance rates. No part of the premium of $179,358 paid by decedent for said insurance policy No. 4842239 paid for any of the said annuity contract No. 30599. The balance of such aggregate consideration, or $40,642 was determined by the said company as the amount to be used by decedent to purchase an annuity contract. The annuity premium of $40,642 paid by decedent for the aforesaid annuity contract No. 30599 did not pay for any of the said insurance policy No. 4842239.

47. In order to protect itself in the event the decedent died shortly after purchasing life insurance policy No. 4885836 aforesaid, The Mutual Life Insurance Company of New York required that the aggregate consideration paid by decedent for said insurance policy No. 4885836 and for the aforesaid annuity contract No. 31908 exceed the face amount of said insurance policy. The said company determined that the face amount of said insurance policy No. 4885836 should be 10/11ths of such aggregate consideration. In determining the premium to be paid by decedent for such face amount of insurance, the said company applied its regular insurance rates. No part of the premiums of $90,642 paid by decedent for said insurance policy No. 4885836 paid for any of the said annuity contract No. 31908 the balance of such aggregate consideration, or $19,358 was determined by the said company as the amount to be used by decedent to purchase an annuity contract. The annuity premium of $19,358 paid by decedent for the aforesaid annuity contract No. 31908 did not pay for any of the said insurance policy No. 4885836.

48. In order to protect itself in the event the decedent died shortly after purchasing life insurance policy No. 2544451 aforesaid, John Hancock Mutual Life Insurance Company required that the aggregate consideration paid by decedent for said insurance policy No. 2544451 and for the aforesaid annuity contract No. 020406 exceed the face amount of said insurance policy. The said company determined that the face amount of said insurance policy No. 2544451 should be 10/11ths of such aggregate consideration. In determining the premium to be paid by decedent for such face amount of insurance, the said company applied its regular insurance rates, and no part of the premium of $43,491 paid by decedent for said insurance policy No. 2544451 paid for any of the said annuity contract No. 020406. The balance of such aggregate consideration, or $10,509 was determined by the said company as the amount to be used by decedent to purchase an annuity contract. The annuity premium of $10,509 paid by decedent for the aforesaid annuity contract No. 020406

did not pay for any of the said insurance policy 2544451.

The disposition of this case upon the foregoing facts is made in an opinion contemporaneously filed.

C. William Kraft, Jr.

[Caption Omitted]

Opinion

Kraft, J. June 27, 1956

Plaintiffs seek to recover from the Collector of Internal Revenue a refund of estate tax deficiency assessed against and paid by the estate of Mary H. Haines, deceased, in the amount of $103,280.84 with interest. Detailed factual admissions, stipulations and findings are filed contemporaneously.

In April, 1934 Mrs. Haines, then aged 76, purchased a single premium life insurance policy in the amount of $200,000 for a premium of $179,358. On the same day she purchased from the same insurance company for a premium of $40,642 a non-refundable annuity contract which provided an annual payment of $5,026 to her for life, any balance on her death reverting to the company. In October, 1934 Mrs. Haines purchased from the same company another single premium life insurance policy in the amount of $100,000 for a premium of $90,642. On the same day she also purchased from that company for a premium of $19,358 a non-refundable annuity contract which provided an annual payment of $2,440.64 to her for life, any balance at her death reverting to the company.

Both life insurance policies issued by this company designated as equal primary beneficiaries the four named children of Mrs. Haines and designated the Fidelity-Philadelphia Trust Company, as trustee under a trust agreement, as contingent beneficiary of the share of any of the children of Mrs. Haines who predeceased her. Pursuant to her written application for the policies each of these two life policies was issued designating her as the

"Insured" and containing the provision noted in the Margin.[1]

Later in October, 1934 Mrs. Haines purchased from a different company a third single life insurance policy in the amount of $50,000 for a premium of $43,491. On the same day she purchased from that company for a premium of $10,509 a non-refundable annuity contract which provided an annual payment of $1,295.56 to her for life; any balance at her death reverting to the company. Mrs. Haines' four children were named as beneficiaries of this life policy in which she reserved no right to change the beneficiaries; however, as issued, the policy proceeds were payable to her executors or administrators if her four children predeceased her. Thereafter, by assignment, Mrs. Haines included this life policy in a schedule forming part of the trust agreement between her and Fidelity-Philadelphia Trust Company and thereupon nominated that company, as trustee, to be contingent beneficiary of the policy which was amended so to provide on November 22, 1934. Under the terms of the trust agreement Mrs. Haines had reserved to herself all benefits, privileges and options available to her under this life policy including the rights of dividend receipt, assignment and surrender. She had reserved also the right to change, amend or revoke the trust agreement. On July 6, 1938 Mrs. Haines amended the trust agreement by assigning irrevocably to the trustee for the purposes of the trust all her right, title and interest in this and any other policy under the trust and by irrevocably empowering the trustee to exercise and enjoy all options, benefits, rights and privileges under this and other policies. By the same amendment she further provided that the trust agreement as so amended

[1] RIGHTS: **Anything in this policy to the contrary notwithstanding, prior to the maturity of this policy, the Insured's children Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines jointly, the survivors or survivor, if none of said children be living, then the living children of said children of the Insured, jointly or the survivors or survivor, if none of the children of said children of the Insured be living, then to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured, some of the beneficiaries may, without the consent and to the exclusion of the Insured or any other beneficiary, receive, exercise, and enjoy every benefit, option, right and privilege conferred by this policy or allowed by the Company.**

was thereafter unalterable and irrevocable. After July 6, 1938 neither Mrs. Haines nor her estate had any beneficial or reversionary interest in the trust or any reversionary interest in any of the three life policies.

In 1935 the four children filed appropriate returns reporting the receipt by each, as gifts from their mother, of a one-fourth interest in each of the life policies. In the same year Mrs. Haines suitably reported gifts of the three life policies to her children and paid gift taxes thereon.

The insurance companies required that the annuity contracts be purchased as a condition of issuance of the respective life policies. The annuity contracts and the annuity payments made to Mrs. Haines thereunder were not based upon or in any way dependent on the premiums paid by her for the respective life policies. The insurance companies would have issued these annuity contracts to Mrs. Haines or to any other person of her age for the same premiums without purchase of any life policies.

The deficiency assessment and the denial of the plaintiffs' refund claim were based on the contention that the life insurance policies were an investment rather than life insurance and that the value was taxable in decedent's gross estate under Section 811(c) of the Internal Revenue Code[2] either as transfers intended to take effect in pos-

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[2] Sec. 811. Gross estate

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(c) [as amended by Section 7(a) of the Act of October 25, 1949, c. 720, P. L. 378 (81st Cong.*)] transfers in contemplation of, or taking effect at, death:

* Section 7(b) of the Act of October 25, 1949 made this section as amended applicable to estates of decedents dying after February 10, 1939.

(1) General rule. To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

(A) in contemplation of his death, any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without consideration, shall unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter; or

(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to

session or enjoyment at or after death or as a transfer in decedent's lifetime of property, the right to income from which the decedent retained for life.

A transfer in which the transferor retains the income for life is quite different from a transfer intended to take effect in possession or enjoyment at or after death. Subsection (B) of Section 811(c)(1) of the Revenue Code of 1939 applies to the former and subsection (C) of that Section to the latter. The transfer by the present decedent occurred before October 7, 1949. Hence, even if Section 811(c)(1)(C) were applicable the inclusion of the value of the life insurance policies is barred by Section 811(c)(2) since the decedent retained no rever-

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the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

(C) intended to take effect in possession or enjoyment at or after his death. . .

(2) Transfers taking effect at death—transfers prior to October 8, 1949. An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1)(C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 per centum of the value of such property. For the purposes of this paragraph, the term 'reversionary interest' includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Commissioner with the approval of the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate.

Section 7(b) of Act of October 25, 1949, c. 720, P.L. 378 (81st Cong.)

(b) The amendment made by subsection (a) shall be applicable with respect to estates of decedents dying after February 10, 1939. The provisions of section 811(c) of the Internal Revenue Code, as amended by subsection (a), shal except as otherwise specifically provided in such section or in the following sentence) apply to transfers made on, before or after February 26, 1926. The provisions of section 811(c)(1)(B) of such code shall not, in the case of a decedent dying prior to January 1, 1950, apply to—

(1) a transfer made prior to March 4, 1931; or

(2) a transfer made after March 3, 1931, and prior to June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516). No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made prior to the date of the enactment of this Act.

sionary interest in the property transferred arising by the express terms of the instrument of transfer.

The defendant's earlier position, that the value of the three life policies were includible in the decedent's gross estate as transfers intended to take effect in possession or enjoyment at or after her death, appears to have been abandoned by the defendant in his brief and oral argument.

Determination of whether the value of the life policies are includible in decedent's estate as a transfer in her lifetime of property, the income or right to income from which she retained for life, involves a consideration of the applicability and rationale of the conflicting decisions upon which plaintiffs and defendants rely. Plaintiffs' prime dependence is upon Bohnen v. Harrison, 7 Cir., 199 F.2d 492.[3] Defendant is afforded support by Burr v. Commissioner of Internal Revenue, 3 Cir., 156 F.2d 871;[4] Conway v. Glenn, 6 Cir., 193 F.2d 965, and Estate of Reynolds v. Commissioner, 45 B.T.A. 44.

In the Burr case the decedent purchased three life policies and an annuity contract and irrevocably assigned the life policies to his children. The Court said:

> "The two purchases were obviously a single transaction, the annuity premium being part of the consideration for the insurance policies. Unless differentiated because of the subsequent assignment, therefore, the case is squarely within the Supreme Court's decision in Helvering v. Le Gierse, 312 U.S. 531, 61 S.Ct. 646, 85 L.Ed. 996, holding the proceeds of the policies taxable under § 811(c)."

With this construction of the Le Gierse case I am unable to agree. In Le Gierse, the life policy and annuity contract were similar to those in the instant case. However, that decedent had never assigned the life policy and still owned it at his death. It was payable to his daughter as beneficiary. His estate contended only that the policy proceeds were "insurance" and, being within the $40,000 exemption, were not includible in the estate. No conten-

[3] Affirmed per curiam by an equally divided court in 345 U.S. 946 (1953).

[4] Cert. den. 329 U.S. 785 (1946).

tion appears to have been made by the estate in Le Gierse that the policy proceeds were not taxable as a transfer intended to take effect at death, if the proceeds were not "insurance." The basic question before the Supreme Court was whether the policy proceeds constituted an amount "receivable as insurance" within the meaning of § 302(g) of the Revenue Act of 1926. The Supreme Court held that, for purpose of determining whether the proceeds of the life policy were "insurance" within the meaning of § 308(g) the life insurance policy and the annuity contract must be read together, and that, so read, no essential element of risk existed and, hence, the proceeds were not true "insurance." The Supreme Court did not say that the two contracts were for all purposes indivisible or inseparable as the Burr and Conway v. Glenn cases decide. On the contrary the right of policy assignment was expressly recognized[5] in Le Gierse, but was deemed immaterial to the question of insurance risk then under consideration.

The Court's statement in Burr that the two purchases were a single transaction and that the annuity premium was part of the consideration for the insurance policies is true only in the sense that the insurance company would not have issued the life policies without the simultaneous purchase of the annuity. Unless the factual situation there presented differed from the present case or was misconstrued, it was erroneous to infer that the premiums for the life policies and the annuity contract were so commingled as to render the policies and the annuity one indivisible asset. In the present case plaintiffs and defendant agree that no part of the premiums for the life policies paid for any annuity contracts and that the annuity premiums paid for no part of the life policies; further, that the present decedent or any other person her age could have purchased the same annuity contracts from the same companies for the same premiums without any life insurance.

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[5] 312 U.S. 531, 541.

The Court's conclusion in the Burr case that the decedent's transactions were an investment rather than insurance accords with the Le Gierse decision. That conclusion, however, does not justify the determination, unsupported by Le Gierse, that an investment so made is then and thereafter indivisible and inseparable.

The Burr case and Conway v. Glenn, supra, which followed it, gave scant attention to the import of Goldstone v. United States.[6] There the decedent had purchased and paid for a life insurance policy and annuity contract. As issued the life policy designated his wife as "Owner" and the decedent as the "Insured," and was payable on his death to his wife, or, if she predeceased him, to their daughters. If all designated beneficiaries predeceased the decedent the policy proceeds were payable to his executors or administrators. The annuity contract, as issued, designated the wife as "Purchaser" and the decedent as "Annuitant." This contract provided for equal semi-annual payments to the decedent during his lifetime and for the payment of $6,071.46 to his wife upon his death or, if she predeceased him, to their daughters or, if they were dead, to his estate. Under both contracts the wife had the unrestricted power to assign, borrow, receive dividends, change beneficiaries and surrender. Both contracts provided that, if the wife predeceased the decedent, all of the enumerated powers were to vest in the decedent to the extent that such powers had not otherwise been exercised by the wife. The Court said:[7]

> "*Helvering* v. *Le Gierse*, 312 U.S. 531, makes it plain that these two contracts, which must be considered together, contain none of the true elements of insurance risk. Section 302(g) of the Act, relating to amounts receivable 'as insurance under policies taken out by the decedent upon his own life,' is therefore inapplicable."

The Court then decided that the proceeds of the life policy and the balance of the annuity contract payable to the

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[6] 325 U.S. 687 (1945).

[7] 325 U.S. at 690.

widow were includible in the decedent's gross estate under Section 302(c) as the subject of a transfer intended to take effect in possession or enjoyment at or after the decedent's death. The Court said:[8]

> "The decedent, in making disposition of $25,000 of his property through these two contracts, retained a valuable interest in that amount which was not extinguished until he died. He retained not only the right to semi-annual payments under the annuity contract but also a contingent reversionary interest in the entire proceeds of both contracts. Had he survived his wife he could have exercised the attributes of ownership over the contracts, changing the beneficiaries or surrending the contracts as he saw fit. If he had survived both his wife and his daughters the proceeds of the two contracts would automatically have been payable to his estate when he died. Thus the ultimate disposition of the proceeds of the contracts was suspended until the moment of decedent's death. Only then did the respective interests of the wife and daughters become fixed; only then were their interests freed from the contingency of the decedent's survival. His death was the decisive fact that terminated all of his potential rights, and insured the complete ripening of the wife's interests. . . . The string that the decedent retained over the proceeds of the contracts until the moment of his death was no less real or significant because of the wife's unused power to sever it at any time.
>
> *The essential element in this case, therefore is the decedent's possession of a reversionary interest at the time of his death*, delaying until then the determination of the ultimate possession or enjoyment of the property. The existence of such an interest constitutes an important incident of ownership sufficient by itself to support the imposition of the estate tax." (Emphasis supplied)

While the specific question in the instant case was left undecided in Goldstone, it is clear that the decision did not give to Le Gierse the interpretation put upon the latter by the Burr case nor did it indicate indivisibility or in-

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[8] 325 U.S. at 691-692.

separability. If, therefore, the present decedent had the right to separate the life insurance contracts from the annuity contract and to dispose of the former, she must be held to have done so conformably with the Goldstone decision since neither she nor her estate retained any direct or reversionary interest, contingent or otherwise, in the three life policies—in short, she retained no string over the proceeds of these policies after July 6, 1938.

That the life insurance policy is separable from the annuity contract under such circumstances as here exist was decided in a well-reasoned opinion in Bohnen v. Harrison in which the Court said:[9]

> "Though the Supreme Court has decided that such an arrangement is in the nature of a single investment program and, therefore, not within the definition of insurance mentioned in the former act, $40,000 of which was then allowed to be deducted from the gross estate of a decedent, it does not follow that this investment program, made up of the two contracts, was indivisible. On the one hand, it is obvious that for the consideration of some $22,000 a fixed annuity of $1600 was bought and that, on the other, in consideration of the sum of some $53,000 advanced, the company agreed to pay, at the insured's death a fixed sum of $72,000. The annuities were not based upon and in no wise dependent upon any consideration given for the life policy. The money to be paid under the life contract was in no wise based or dependent upon the sum advanced to secure the annuities. The two contracts constituted independent units, two pieces of property. Consequently, when the insured immediately transferred and assigned all of her right, title and interest of every character in and to the policy of insurance, that unit of her estate passed to

[9] 199 F.2d at 493.

[fol. 25] IN UNITED STATES DISTRICT COURT

EXHIBIT A TO STIPULATION OF FACTS

199 S
Life—Single Premium.
January, 1932.

Philadelphia

No. 4,842,239

The Mutual Life Insurance Company of New York

ANNUAL DIVIDEND
SINGLE PREMIUM LIFE POLICY

On the Life of

DRAW CHECK TO PAY THIS PREMIUM TO THE ORDER OF THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

Mary H. Haines

Amount, $ 200,000

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

(First Policy issued February 1st, 1843)

Secretary.

Notice has been received that the name of Robert B.Haines one of the beneficiaries hereunder is Robert B.Haines,3rd instead of as herein stated.
The Mutual Life Insurance Company of New York.

New York,N.Y.May 29,1935.

WILL PAY

(beneficiaries specified in the "Designation of Beneficiary"
to the Insured's (clause endorsed on page 3 hereof , the Beneficiary,

DEATH BENEFIT TWO HUNDRED THOUSAND Dollars,
(Face Amount of this Policy)

upon receipt of due proof of the death

of Mary H. Haines , the Insured.

the assignees, and was no longer her property. It could, therefore, under no conception, constitute a part of her taxable estate when she died thereafter."

The determination should rest upon the realities of the situation and the essential nature of the donee's ownership. The realities of the situation are that this decedent made investments which were not true insurance because no risk element to the insurer was involved. However, the life policies and annuity contracts were, on their faces, separate contracts and, while they must be read together to determine the realities, no valid reason is advanced by the defendant to hold that such an obligatory joint perusal welds them together permanently and indissolubly for all purposes.

Judgment will be entered in favor of the plaintiffs upon submission within fifteen days of an appropriate form of judgment.

C. WILLIAM KRAFT, JR.

[Caption Omitted]

Judgment

AND NOW, to wit this 6th day of August 1956, in accordance with the Finding of Fact and Opinion of the Court filed on June 27, 1956, it is ordered that judgment be and is hereby entered in favor of plaintiffs, FIDELITY-PHILADELPHIA TRUST COMPANY and ROBERT B. HAINES, III, Executors of the Will of Mary H. Haines, and against defendant, FRANCIS R. SMITH, Collector of Internal Revenue, in the sum of $103,280.84 with interest from August 6, 1948,

at the rate of six per cent (6%) per annum and with costs as provided by law.

BY THE COURT:

/s/ C. WILLIAM KRAFT, JR.
J.

APPROVED AS TO FORM ONLY:

/s/ ROBERT T. MCCRACKEN
Robert T. McCracken,
Attorney for Plaintiff

/s/ JOHN B. LEAKE
John B. Leake,
Attorney for Plaintiff

/s/ W. WILSON WHITE
W. Wilson White,
United States Attorney

/s/ ALAN J. SWOTES
Alan J. Swotes,
Assistant United States Attorney

L. J. SANTAMARIE
INSURANCE COUNSELLOR
123 S. BROAD ST., PHILA.

No. 4,042,497

The Mutual Life Insurance Company of New York

ANNUAL DIVIDEND SINGLE PREMIUM LIFE POLICY

On the Life of

DRAW CHECK TO PAY THIS PREMIUM TO THE ORDER OF THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

Mary H. Haines

Amount, $ 200,000

Date, April 27th 19 34

Single Premium, $179,358.00

2-928

upon receipt of due proof of the death

of Mary H. Haines , the Insured.

This Policy also provides for

GENERAL PROVISIONS

Optional Modes of Settlement (Section 1), Loans (Section 3),

Annual Dividends (Section 2), Cash Value (Section 4).

This Policy is issued in consideration of the application and of the payment of the single premium of

SINGLE PREMIUM

ONE HUNDRED SEVENTY NINE THOUSAND THREE HUNDRED FIFTY EIGHT Dollars.

When the premium on this Policy is paid to the Company, it will be acknowledged either by a receipt signed by the Treasurer and countersigned by the Agency Cashier, or by endorsement on the Policy by the Company at its Home Office. Possession of this Policy is not otherwise evidence of the payment of such premium.

The succeeding pages 2 and 3 of this Policy are a part of this contract.

In Witness Whereof, the Company has caused this Policy to be executed this Twenty-seventh day of April 1934.

Secretary. David F. Houston. President.

Countersigned L. Wolfe. Registrar.

See Mode of Settlement attached hereto

Section 1. Optional Modes of Settlement.

The proceeds of this Policy, upon maturity as a death claim or upon surrender, as the case may be, may, if so elected, be settled by one of the following optional Modes of Settlement instead of being paid in one sum:—

Option 1.—By the Company's holding the proceeds as a principal sum payable at the death of the payee, the Company meanwhile paying monthly interest (with a final interest payment to the date of such death) at three per cent a year plus participation in excess interest at such rate as the Company may determine for each year;

Option 2.—By payment of equal monthly instalments for the number of years elected, in accordance with the table on page 3. Instalments will be increased by participation in excess interest over three per cent a year at such rate as the Company may determine for each year;

Option 3.—By payment of equal monthly instalments for five, ten, or twenty years certain, as elected, and for the remaining lifetime of the payee, in accordance with the table on page 3. Instalments for the period certain will be increased by participation in excess interest over three per cent a year at such rate as the Company may determine for each year;

Option 4.—By payment of equal monthly instalments of the amount specified in the election as long as the proceeds, together with interest thereon as provided for in Option 1, shall suffice, with a final payment of any balance less than one such instalment.

Under Option 1 the first interest payment will be due at the end of one month from the date when the proceeds become payable. Under Options 2, 3, and 4 the first instalment will be due when the proceeds become payable.

Note.—If requested in the election, payment of interest under Option 1 or of instalments under Option 2, 3, or 4 will be made quarterly, semi-annually, or annually instead of monthly. The first payment of interest under Option 1 will be due at the end of three months, six months, or one year according as interest payments are quarterly, semi-annual, or annual. The first instalment under Option 2, 3, or 4 will in all cases be due when the proceeds become payable.

Method of Election.—An optional Mode of Settlement can be elected, or a previous election revoked or changed, only by written notice to the Company at its Home Office accompanied by the Policy for endorsement.

Note.—When a payee becomes entitled to a single sum, he may elect one of these options.

General Provisions.—Joint or contingent payees may be named under the above options within such limitations as may be prescribed by the Company, except that under Option 3 there cannot be joint payees and the instalments to contingent payees will not be payable beyond the period certain.

These optional Modes of Settlement are not available if a corporation, association, partnership, or estate is the payee, nor if the guaranteed interest payments or instalments will, irrespective of dividends or indebtedness, be less than $10 each.

If any of the above options has been elected, a supplementary contract bearing the date on which the proceeds of the Policy become payable and providing for the settlement elected will be issued.

Surrender or Transfer of Supplementary Contract.—Unless otherwise specified in the election, neither the supplementary contract nor any of the benefits accruing thereunder shall be transferable or subject to surrender, commutation, or encumbrance, except that at the death of the last surviving payee the then surrender value as defined below shall be payable to the executors or administrators of such payee.

The surrender value of the supplementary contract shall be as follows:

Option 1.—The principal sum with any accrued interest;

Options 2 and 3.—The commuted value, computed at three per cent interest compounded annually, of future instalments certain. Under Option 3 no such surrender may be made during the lifetime of the original payee;

Option 4.—Such part of the proceeds of the Policy and interest thereon as shall not have been paid in instalments.

Section 2. Annual Dividends.

The share of the divisible surplus accruing on this Policy shall be allotted as a dividend annually on each anniversary of its date.

Each such dividend may be either:—

1. Used to purchase a paid-up participating addition to the sum insured, herein called dividend addition, which shall be automatically added on the date of allotment and will continue in force unless and until one of the other options be duly elected; or,

2. Paid in cash; or,

3. Deposited with the Company at interest within ninety days from date of allotment (called dividend deposit). Interest will be credited at such rate as may be determined by the Company, but never less than three per cent a year, and will be added to existing dividend deposits annually. Dividend deposits existing at the death of the Insured shall be then payable to the beneficiary.

At any time any dividend additions may be surrendered for the full reserve thereon or any accumulated dividend deposits may be withdrawn.

Post Mortem Dividend.—Upon the death of the Insured a cash dividend will be credited to this Policy for the fraction of the policy year elapsed before such death.

Section 3. Loans.

At any time while this Policy is in force, the Company will, upon receipt of the Policy and a loan agreement satisfactory to the Company and on the sole security of this Policy, loan an amount which with interest shall be within the limit of the cash value of this Policy on the due date of the loan.

Any existing indebtedness to the Company on the Policy shall be paid out of such loan.

Interest on the loan shall be at the rate of six per cent a year payable on the due date of the loan provided for in the loan agreement and on each anniversary of the date of the Policy thereafter. If this interest is not paid when due it shall be added to the existing loan and bear interest at the same rate. Failure to repay the loan or pay interest shall not avoid the Policy unless the total indebtedness, including accrued interest, shall equal or exceed the cash value of the Policy, in which case the Policy shall become void thirty-one days after notice shall have been mailed to the Insured and any assignee of record at the Home Office of the Company at their last known addresses.

The loan, with accrued interest, or any part thereof not less than $10, may be repaid at any time prior to the date when due.

Section 4. Cash Value.

At any time after this Policy shall have been one year in force, this Policy may be surrendered for its net cash value. Such net cash value shall be the cash value as defined below less any indebtedness to the Company hereon.

The cash value at any time shall be the reserve at such time for the face amount of this Policy and for any dividend additions hereto increased by any accumulated dividend deposits and less a surrender charge of not more than two per cent of the face amount of this Policy.

After the Policy has been ten years in force there shall be no surrender charge.

Section 5. Table of Cash and Loan Values.

These values are computed in accordance with the provisions of Sections 3 and 4 and are on the assumption that there are no dividends or indebtedness.

Any dividend additions or dividend deposits will increase such values and any indebtedness to the Company on this Policy will decrease such values as provided in the above mentioned sections.

Values for intermediate periods will be calculated as provided in Sections 3 and 4.

J.

At End of Policy Year	FOR EACH $1,000 FACE AMOUNT Cash Value (Also Loan Value as Explained in Section 3)	At End of Policy Year	FOR EACH $1,000 FACE AMOUNT Cash Value (Also Loan Value as Explained in Section 3)
1	$822.97	14	$945.23
2	334.30	15	951.58
3	845.49	16	957.49
4	856.56	17	962.31
5	867.42	18	966.33
6	875.60	19	970.37
7	886.13	20	XXXXXXX
8	896.59	21	
9	907.01	22	
10	917.32	23	
11	924.88	24	
12	932.02	25	
13	938.75	30	

NOTE.—The loan value stated in the above table for the end of a policy year will, less interest, be available during such year as provided in Section 3.

Section 6. Reserves.

The reserve held for the face amount of this Policy and for any dividend additions, and the reserves mentioned in this Policy shall be computed in accordance with the American Experience Table of Mortality assuming interest at the rate of three per cent a year.

[fol. 27]

RIGHTS: Anything in this policy to the contrary notwithstanding, prior to the maturity of this policy, the Insured's children Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines jointly, the survivors or survivor, if none of said children be living, then the living children of said children of the Insured, jointly or the survivors or survivor, if none of the children of said children of the Insured be living, then to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured, some of the beneficiaries may, without the consent and to the exclusion of the Insured or any other beneficiary, receive, exercise, and enjoy every benefit, option, right and privilege conferred by this policy or allowed by the Company.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

New York, N. Y. April 27,1934
32-515

27

Secretary

Endorsement attached to and forming a part of policy No. 4842,239.
issued by The Mutual Life Insurance Company of New York.

Mode of Settlement.

It is agreed
~~The Insured has elected~~ that if this policy matures as a claim by death, settlement of the amount payable shall be made as follows, provided, however, that any change of beneficiary hereunder shall constitute a revocation of this election of Mode of Settlement:

I. PAYEES:

Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines, children of the Insured, are hereinafter referred to as the payees.

II. IF ANY OF THE PAYEES OR ANY CHILD OF ANY OF THE PAYEES SHALL SURVIVE THE INSURED:

The amount payable at the death of the Insured shall be divided into such number of equal parts as shall equal the number of the payees who shall be living at the death of the Insured plus the number of the payees who shall have predeceased the Insured and who shall leave a child or children living at the death of the Insured. One such part shall be apportioned to each then living payee and any remaining part or parts shall be apportioned to The Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee or its successor trustee under a trust agreement dated May 8, 1934 made by and between the Insured and said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania.

Any amount apportioned at the death of the Insured to any payee shall be settled by Mode of Settlement (4) with quarterly payments to such payee at the rate of $12. for each $1,000. of the amount apportioned to such payee at the death of the Insured.

Any amount apportioned at the death of the Insured to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee, or its successor trustee under said trust agreement shall be payable in a single sum.

If any payee shall die during the continuance of said Mode of Settlement (4) and:

(a) If any child of such payee shall be living at the death of such payee, each remaining payment under said Mode of Settlement (4) in favor of such payee and any part of any remaining payment under said Mode of Settlement (4) in favor of any other payee to which such payee became entitled by reason of the death of any other payee shall be apportioned to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee or its successor trustee, under a trust agreement dated May 8, 1934 made by and between the Insured and said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania.

(b) If no child of such payee shall be living at the death of such payee, each of the remaining payments under said Mode of Settlement (4) in favor of such payee and any part of any remaining payment under said Mode of Settlement (4) in favor of any other payee to which such payee became entitled by reason of the death of any other payee, shall be divided into such number of equal parts as shall equal the number of the other payees who shall be living at the death of such payee plus the number of the other payees who shall have predeceased such payee and who shall leave a child or children living at the death of such payee. One such part shall be apportioned to each then living other payee and any remaining part or parts shall be apportioned to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee or its successor trustee under a trust agreement dated May 8, 1934 made by and between the Insured and said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania.

The part of each remaining payment under said Mode of Settlement (4) apportioned at the death of any payee to any other payee shall be payable as it becomes due to such other payee, if such other payee shall be living on its due date.

At the death of any payee, such part of the then surrender value of the supplementary contract as shall correspond to the part of each remaining payment under said Mode of Settlement (4) then apportioned to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee or its successor trustee under said trust agreement shall be payable in a single sum to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee, or its successor trustee under said trust agreement, instead of such part of each remaining payment being payable, when due.

If the last survivor of the payees shall die during the continuance of said Mode of Settlement (4) and if no child of any payee shall be living at the death of such last survivor, such settlement shall terminate at the death of such last survivor and the then surrender value of the supplementary contract shall be payable in a single sum to the executors or administrators of such last survivor.

III. IF NONE OF THE PAYEES OR ANY CHILD OF ANY OF THE PAYEES SHALL SURVIVE THE INSURED:

The amount payable at the death of the Insured shall be payable in a single

Endorsement attached to and forming a part of policy No. 4842,239

issued by The Mutual Life Insurance Company of New York.

MODE OF SETTLEMENT (continued)

sum to the executors or administrators of the last survivor of the payees and the children of the payees.

IV. IT IS AGREED THAT THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK shall not be responsible for any failure of said trustee or successor trustee to perform its duties as trustee, nor for the application or disposition of any moneys paid to such trustee, and payment to such trustee shall fully discharge The Mutual Life Insurance Company of New York for the amount so paid.

[fol. 29]

(see page three)

29

Endorsement attached to and forming a part of policy No. 4842,239.
issued by The Mutual Life Insurance Company of New York.

V. IT IS UNDERSTOOD AND AGREED THAT THE FOLLOWING PROVISIONS SHALL APPLY TO ALL MODES OF SETTLEMENT

Designation of Mode of Settlement

(a) Any Mode of Settlement herein designated by number is the one bearing such number in the provision for Optional Modes of Settlement in this Policy;

Supplementary Contract not Transferable

(b) Unless and except as otherwise provided for herein, neither the supplementary contract nor any benefits accruing thereunder shall be transferable or subject to surrender, commutation, anticipation, or encumbrance, or in any way subject to the debts of any beneficiary or payee, or to legal process except as otherwise provided by law;

Evidence as to Payees

(c) The Company in determining the persons comprising any class mentioned in this Mode of Settlement, the names, addresses, ages, dates of death, or any other facts relating to any beneficiaries or other persons mentioned in this endorsement, either as a class or otherwise, may rely solely on any affidavit or other written evidence deemed satisfactory to it, and in making any payment or taking any action in reliance thereon shall be fully protected; and

Payments at Least $10

(d) If on the due date of any payment under any Mode of Settlement, the total guaranteed payment to any payee under the supplementary contract shall be less than $10, the Company may at its option, change the payments due after such date to the first of the following which shall make each such payment at least $10; viz. quarterly, semi-annual, or annual; the first such quarterly payment being payable three months from such due date, the first such semi-annual payment being payable six months from such due date, or the first such annual payment being payable one year from such due date.

VI IT IS UNDERSTOOD AND AGREED THAT THE FOLLOWING PROVISIONS SHALL APPLY TO THE MODE OF SETTLEMENT SPECIFIED IN THE MARGIN IF SUCH MODE OF SETTLEMENT HAS BEEN ELECTED

Option (1)

(a) If any payee shall die during the continuance of Mode of Settlement (1) in favor of such payee, then at the death of such payee, (a) interest on any part of the principal sum then settled by Mode of Settlement (1) shall continue to be paid on the same due dates as under the Mode of Settlement in favor of such payee, and (b) accrued interest from the date of the last preceding interest payment on any part of the principal sum then payable in a single sum or settled by another Mode of Settlement shall be payable or settled, as the case may be, with such part.

Option (2)

(b) If any payee entitled to Mode of Settlement (2) at the death of the Insured shall die after such death but before receipt at the Home Office of the Company of due proof of such death, settlement shall be made by payment to the same payee or payees and in the same manner as hereinbefore provided for settlement had such payee so dying not survived the Insured.

Option (4)

(c) Unless and except as otherwise provided for herein, if any amount payable under any provision for Double Indemnity shall increase the amount settled by Mode of Settlement (4), it shall not increase the amount of the payments thereunder, but shall be used either: (a) to extend the period during which said Mode of Settlement (4) shall be in effect, or, (b) if, under the provisions of this endorsement, said Mode of Settlement (4) shall terminate before the principal and interest are exhausted, to increase the amount payable on the date of such termination.

Option (4)

(d) In no case shall the total payments in any supplementary contract year under Mode of Settlement (4) be less than the total interest credited thereunder for such year.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

New York, N. Y. April 27th 19 34

Secretary

Countersigned [signature] Registrar

Section 7. Miscellaneous Provisions.

Residence and Travel.—This Policy is free from restrictions as to residence and travel.

Occupation.—This Policy is free from restrictions as to occupation.

Suicide.—In the event of the self-destruction of the Insured, whether sane or insane, within one year after the date of issue of this Policy, the amount payable shall be limited to an amount equal to the premium paid hereon.

Incontestability.—This Policy shall be incontestable after one year from its date of issue unless the Insured dies in such year, in which event it shall be incontestable after two years from its date of issue.

Misstatement of Age.—If the age of the Insured shall have been misstated, the amount payable by the Company shall be such as the premium paid would have purchased at the correct age.

Change of Beneficiary.—Unless otherwise provided by endorsement on this Policy or unless there be an existing assignment of this Policy other than to the Company, the beneficiary may be changed from time to time, while the Policy is in force, by written notice to the Company at its Home Office accompanied by the Policy for endorsement. Such change shall take effect upon endorsement of the Policy by the Company.

The interest of any beneficiary who dies before the Insured shall vest in the Insured unless otherwise provided in this Policy.

Rights of the Insured.—Except as may otherwise be specifically provided in this Policy or by endorsement on this Policy, the Insured may during his lifetime, without the consent and to the exclusion of the beneficiary, receive, exercise, and enjoy every benefit, option, right, and privilege conferred by this Policy or allowed by the Company.

Policy Settlement.—All sums payable by the Company under this Policy shall be payable at the Home Office of the Company in the City of New York.

In any settlement of this Policy at its maturity as a death claim or on surrender, any indebtedness to the Company on this Policy shall be deducted and surrender of the Policy to the Company will be required.

The Contract.—This Policy and the application, copy of which is attached, constitute the entire contract.

All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid or be used in defence to a claim under this Policy unless contained in the written application and a copy of the application is attached to the Policy when issued.

Assignment.—The Company shall not be charged with notice of any assignment of any interest in this contract until the original assignment or a certified copy thereof has been filed with the Company at its Home Office.

The Company assumes no responsibility as to the validity or effect of any assignment.

All assignments shall be subject to any indebtedness to the Company on account of or secured by this Policy.

Notice.—No agent or other person except the President, a Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits or accepting any representations or information not contained in the written application for this Policy, or to make or modify this contract, or to extend the time for payment of the premium, or to waive any forfeiture or any of the Company's rights or requirements.

Monthly and Annual Instalments for Each $1,000 of Proceeds of Policy under Optional Modes of Settlement 2 and 3

The semi-annual and quarterly instalments are 50.37% and 25.28% respectively of the annual instalment

OPTION 2

Number of Years' Instalments	Each Monthly Instalment	Each Annual Instalment
2	$12 86	$507 39
3	28 99	343 23
4	22 06	261 19
5	17 91	212 00
6	15.14	179.22
7	13 16	155 83
8	11 68	138 31
9	10.53	124 69
10	9 61	113 82
11	8 86	104 93
12	8 24	97 54
13	7 71	91 29
14	7 26	85 95
15	6 87	81 33
16	6.53	77 29
17	6 23	73 74
18	5 96	70 59
19	5.73	67 78
20	5 51	65 26
21	5.32	62 98
22	5.15	60 92
23	4 99	59 04
24	4 84	57 33
25	4.71	55 76
26	4.59	54 31
27	4.47	52 98
28	4 37	51 74
29	4 27	50 60
30	4 18	49 53

OPTION 3

Age of Payee When Proceeds Payable	5 Years Certain		10 Years Certain		20 Years Certain	
	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment
10 and under	$3 81	$44 85	$3.75	$44.21	$3.58	$42.20
11	3 83	45 07	3 77	44 41	3 59	42 36
12	3 85	45 30	3 79	44 62	3.61	42 54
13	3 87	45 54	3 81	44 84	3 62	42 71
14	3 89	45 78	3 83	45 07	3.64	42 90
15	3 91	46 03	3 85	45 29	3.65	43 08
16	3 94	46 27	3 87	45 53	3.67	43 27
17	3 96	46 52	3 89	45 76	3 69	43 47
18	3 98	46 77	3 91	45 99	3.70	43 66
19	4 00	47 02	3 93	46 23	3.72	43 87
20	4 02	47 28	3 95	46 48	3.74	44 07
21	4 05	47 55	3 97	46 74	3.76	44 29
22	4 07	47 84	4 00	47 01	3.78	44 52
23	4.10	48 14	4 02	47 29	3.80	44.75
24	4.12	48.45	4.05	47.59	3.82	45.00
25	4 15	48 77	4 07	47 90	3 84	45 25
26	4 18	49 12	4 10	48 22	3.86	45 51
27	4 21	49 47	4 13	48 56	3 89	45 79
28	4 25	49 85	4 16	48 91	3 91	46 07
29	4 28	50 24	4 19	49 28	3 94	46 37
30	4 32	50 65	4 23	49 66	3 96	46 67
31	4 35	51 08	4 26	50 07	3 99	46 99
32	4 39	51 53	4 30	50 49	4 02	47 32
33	4 43	52 01	4 33	50 93	4 05	47 66
34	4 48	52.50	4 37	51 39	4 08	48 01
35	4 52	53 02	4 42	51 87	4 11	48 38
36	4 57	53 56	4 46	52 38	4 14	48 75
37	4 62	54 13	4 51	52 90	4 17	49 14
38	4 67	54 73	4 55	53 45	4 21	49 54
39	4 73	55 36	4 60	54 03	4 24	49 96
40	4 78	56 02	4 65	54 63	4 28	50 38
41	4 84	56 71	4 71	55 26	4 32	50 82
42	4 91	57 43	4 77	55 91	4 35	51 27
43	4 97	58 19	4 83	56 60	4 39	51 73
44	5 04	58 99	4 89	57 31	4 43	52 20
45	5 12	59 83	4 95	58 06	4 48	52 69
46	5 19	60 71	5 02	58 84	4 52	53 18
47	5 27	61 64	5 09	59 66	4 56	53 68

Age of Payee When Proceeds Payable	5 Years Certain		10 Years Certain		20 Years Certain	
	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment
48	$5 36	$62 61	$5 17	$60 51	$4 60	$54 20
49	5 45	63 63	5 24	61 40	4 65	54 71
50	5 54	64 70	5 32	62 33	4 69	55 24
51	5 64	65 83	5 41	63 30	4 74	55 77
52	5 74	67 02	5 49	64 30	4 78	56 30
53	5 85	68 26	5 58	65 35	4 83	56 84
54	5 97	69 57	5 68	66 44	4 87	57 37
55	6 09	70 95	5 78	67 57	4 92	57 90
56	6 22	72 40	5 88	68 75	4 96	58 43
57	6 35	73 93	5 98	09 98	5 00	58 95
58	6 49	75 53	6 09	71 24	5 05	59 46
59	6 64	77 22	6 21	72 55	5 09	59 96
60	6 80	78 99	6 32	73 91	5 13	60 45
61	6 96	80 85	6 44	75 31	5 17	60 92
62	7 13	82 81	6 57	76 75	5 20	61 37
63	7 31	84 87	6 70	78 23	5 24	61 80
64	7 51	87 03	6 83	79 75	5 27	62 20
65	7 71	89 31	6 96	81 30	5 30	62 59
66	7 92	91 69	7 09	82 89	5 33	62 94
67	8 14	94 29	7 23	84 50	5 36	63 27
68	8 37	96 81	7 37	86 14	5 38	63 57
69	8 61	99 56	7 51	87 79	5 40	63 84
70	8 86	102 45	7 65	89 46	5 42	64 08
71	9 13	105 44	7 79	91 12	5 42	64 08
72	9 40	108 57	7 93	92 79	5 42	64 08
73	9 69	111 84	8 07	94 44	5 42	64 08
74	9 99	115 25	8 21	96 00	5 42	64 08
75	10 30	118 78	8 34	97 65	5 42	64 08
76	10 62	122 44	8 47	99 21	5 42	64 08
77	10 95	126 22	8 59	100 71	5 42	64 08
78	11 29	130 13	8 71	102 14	5 42	64 08
79	11 64	134 14	8 82	103 51	5 42	64 08
80	12 00	138 25	8 92	104 80	5 42	64 08
81	12 36	142 44	8 92	104 80	5 42	64 08
82	12 73	146 70	8 92	104 80	5 42	64 08
83	13 09	151 00	8 92	104 80	5 42	64.08
84	13 46	155 34	8 92	104 80	5 42	64 08
85 and over	13 83	159 67	8 92	104 80	5 42	64 08

DESIGNATION OF BENEFICIARY: Insured's children, Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines, the Fidelity-Philadelphia Trust Company of Philadelphia, Pennsylvania, as trustee, or its successor trustee, under a trust agreement dated May 8, 1934 made by and between the Insured and said Fidelity-Philadelphia Trust Company of Philadelphia, Pennsylvania, and the executors or administrators of the last survivor of said children of the Insured and of the children of said children of the Insured, all as provided in Mode of Settlement attached hereto.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

New York, N.Y. April 27, 1934

Secretary

[fol. 31]

QUESTIONS TO BE ANSWERED BY THE PERSON TO BE INSURED

(Whenever the word "Insured" is used in this application, it shall be construed as meaning "the person whose life is proposed for insurance".)

THIS APPLICATION is made to THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK herein called the Company. All the following statements and answers, and all those that the Insured makes to the Company's Medical Examiner, as a part of this application, are true, and are offered to the Company as an inducement to issue the proposed policy. (The Insured expressly waives on behalf of himself or herself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has attended or examined, or who may hereafter attend or examine the Insured, from disclosing any knowledge or information which he thereby acquired.) The proposed policy shall not take effect unless and until delivered to and received by the Insured, the Beneficiary or by the person who herein agrees to pay the premiums, during the Insured's continuance in good health and unless and until the first premium shall have been paid during the Insured's continuance in good health; except in case a conditional receipt shall have been issued as hereinafter provided.

Name in full of Insured:
Given Name, Middle Name (If any) and Surname (Print Plainly) Mary H Haines

For H. O. Use APR 3124

1. RESIDENCE OF INSURED — PERIOD Yrs. / Mos.

Street and No. 156 School Lane
Town, City or Village Philadelphia
or ... miles in a ... direction
from ... on R. F. D. No. ...
County Philadelphia
State or Province Penna
Former residences as above

Business address of Insured 156 School Lane Phila — Yrs. 40
Name of firm or employer of Insured no employed
Nature of business of Insured ... so engaged ... yrs. ... mos.
Present occupation and duties of Insured At Home
Other occupations of Insured are: (If none, state None) no other
Former occupations of Insured: (If none, state None)
Nature Home Wife Place 156 School Lane Phila Pa

Place of birth of Insured Coatesville Town or City Penna State or Country
Date of birth of Insured April 7th day of Mar 1858
Age of Insured nearest birthday 76 Sex Female
Citizen of U S A
Send all communications To 156 School Lane
P. O. Address Philadelphia Pa

2. The Insured does not contemplate either (a) going to a foreign or tropical country, or (b) changing his occupation. no

3. The Insured has not made, nor does he contemplate making aviation flights, or aeronautical ascensions. (If any exceptions furnish regular aviation form.) no

4. No negotiations for other insurance on the life of the Insured, nor any application for reinstatement of insurance on the life of the Insured, are now pending or contemplated. yes

5. No application or examination for life insurance on the life of the Insured has ever been declined or postponed by any company or association, nor has any company offered a policy differing in plan, amount or premium from that applied for. no

Exceptions to 2, 3, 4 and 5, to be noted in No. 6.

6. Details of Exceptions to Questions, 2, 3, 4, 5. (If none, state None) 2, 3, 5 no application for insurance amount to Two other cos total $600 000

7. The following is all the insurance now in force on the Insured's life: (If none, state None)

Name of Company or Association	Amount
Mutual Life	50000

8. (To be answered if Waiver of Premium applied for.) The total amount of disability income in all companies payable in the event of disability is $ ... annually.

9. (a) Amount $ 300 000 00 (b) Premiums Single — annually — Answer YES, NO

10. Plan (State fully) Life (Single Premium) — Waiver of Premium no — Double Indemnity no

11. It is agreed that if the Company is unwilling to issue a policy for plan and amount applied for, this application shall be for such plan and amount as may be issued by the Company.

12. If Beneficiary predeceases Insured policy will be payable to Insured's estate unless otherwise herein specified or unless Beneficiary be Creditor or Partner. If Endowment state payee at maturity as Endowment
(a) Name (in full) of Beneficiary If a corporation give head office and state of incorporation Isabella H Miller, Robert B Haines Margaret H Haines Charles H Haines children if living under wills
(b) P. O. Address of Settlement 4 Trust Co Letters 2/2/24 and 3/5/34
(c) Relationship to the Insured or Insurable Interest Children & Grandchildren

13. All benefits, options, rights, and privileges conferred by the policy or allowed by Company, including the right to change Beneficiary are reserved to Beneficiary except right to ... (Insert right) ... is reserved to Beneficiary (Insert Insured or Beneficiary)

14. $ ... in cash has been paid to the Soliciting Agent and a conditional receipt No. ..., dated ..., signed by the Secretary of the Company, and countersigned by the agent has been issued making the insurance in force from such date, provided this application shall be approved.

15. Will any insurance issued under this application replace in whole or in part, insurance in this or any other Company? no (Answer YES or NO. If yes, give details)

It is agreed that in the event of the self-destruction of the Insured whether sane or insane during the first year following the date of issue of the policy hereby applied for the Company's liability shall be limited to the amount of the premiums paid. It is agreed that no Agent or other person except the President, a Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits under any policy issued hereunder or accepting any representations or information not contained in this application, or to make, or modify any contract of insurance, or to extend the time for payment of a premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements.

This application is made at the instance and request of the undersigned, who, it is agreed, will pay all premiums out of his, her or its funds, and who ratifies the representations, statements, answers and agreements contained in such application and in the statements to Medical Examiner.

Signature in full of Insured Mary H Haines
Dated at Phila Pa on 4/5 1934
Signature of Parent or Guardian ... I consent to the above application:
(Required if Insured a minor under age 15)
I have known the Insured for ... years and saw ... sign this application.
So far as known to me any insurance issued under this application will not replace in whole or part insurance in this or any other Company.

Signature in full of person or persons who will pay the premiums
(If a corporation, an officer other than Insured to sign for corporation, WITH TITLE.)

(Foregoing to be executed only when the application is made at the instance and request of some one other than the person to be insured and who will pay the premiums.)

... Soliciting Agent.

Upon request the policy may be antedated for a period not to exceed six months from date of examination unless prohibited by law.

Rider Form XI-A—Ed. 3-43

M. C. H. JT 6-14-44 tf-2

Rider attached to and forming a part of Policy No. 4842239 on the life of Mary H. Haines issued by THE MUTUAL LIFE INSURANCE COMPANY of NEW YORK.

DESIGNATION OF BENEFICIARY, INCOME SETTLEMENT, AND RIGHTS UNDER POLICY

The persons designated under "Beneficiary for all Funds" will become entitled in the order and proportions stated below to each of the Funds defined in this rider, if living when each such Fund becomes payable, and each such Fund will be settled as provided below.

BENEFICIARY FOR ALL FUNDS at the time designated

Upon receipt of due proof of the Insured's death:

One-fourth of such Funds to the Insured's daughter, Margaret W. Haines, if living, if not, to such of the children of said Margaret W. Haines as shall be living, share and share alike, or if none is living, to the Insured's other children, Robert B. Haines, 3rd, Charles H. Haines, and Isabelle H. Miller, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

One-fourth of such Funds to said Robert B. Haines, 3rd, if living, if not, to such of the children of said Robert B. Haines, 3rd as shall be living, share and share alike, or if none is living, to Mary T. Haines, spouse of said Robert B. Haines, 3rd, if living if not, to the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

One-fourth of such Funds to said Charles H. Haines, if living, if not, to such of the children of said Charles H. Haines as shall be living, share and share alike, or if none is living, to Margery Speakman Haines, spouse of said Charles H. Haines, if living, if not, to the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

One-fourth of such Funds to said Isabelle H. Miller, if living, if not, to such of the children of said Isabelle H. Miller as shall be living, share and share alike, or if none is living, to William McE. Miller, spouse of said Isabelle H. Miller, if living, if not, to the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

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At the death, during Option 3, of each of said children of the Insured:

Such of the children of such child of the Insured as shall be living, share and share alike, or if none is living, the above-named spouse, if any, of such child of the Insured, if such spouse is living, if not living or if no spouse of such child of the Insured is named above, the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the

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(see next page of this rider)

Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, the executors or administrators of such child of the Insured.

At the death of each child of any of said children of the Insured during Option 3:

Such of the other children of such child of the Insured as shall be living, share and share alike, or if no other child of such child of the Insured is living, to the above-named spouse, if any, of such child of the Insured, if such spouse is living, if not living or if no spouse of such child of the Insured is named above, the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, the executors or administrators of such child of such child of the Insured.

At the death, during Option 3, of each or said Mary T. Haines, said Margery Speakman Haines and said William McE. Miller:

The others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share, divided equally. If none is living, the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

Settlement of any Part of the Funds to which each of said children of the Insured becomes entitled at the time designated

Upon receipt of due proof of the Insured's death:

Option 3 with monthly payments and with twenty years certain.

At any other time:

Single sum.

Settlement of any Part of the Funds to which each child of each of said children of the Insured becomes entitled at the time designated

Upon receipt of due proof of the Insured's death:

Option 3 with monthly payments and with twenty years certain.

At the death, during Option 3, of the one of said children of the Insured who is a parent of such child; or at the death, during Option 3, of each other child of such child of the Insured:

Remaining payments shall be payable when due.

At any other time:

Single sum.

Settlement of Any Part of the Funds to which each of said Mary T. Haines, said Margery Speakman Haines and said William McE. Miller becomes entitled at the time designated

Upon receipt of due proof of the Insured's death:

Option 3 with monthly payments and with twenty years certain.

At the death, during Option 3, of the one of said children of the Insured who is a spouse of such beneficiary; or at the death, during Option 3, of any child of such child of the Insured:

Remaining payments shall be payable when due.

(see next page of this rider)

Settlement of any Part of the Funds to which any other beneficiary becomes entitled at the time designated

At any time:
Single sum.

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(see next page of this rider)

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Page 4 of Designation of Beneficiary, Income Settlement, and Rights under Policy, for Policy No. 4842239

The provisions of this rider together with the provisions of the section, if any, of this Policy providing for Income Settlement Options, Modes of Settlement, or Optional Modes of Settlement constitute the entire income settlement arrangement elected for this Policy, unless otherwise specifically stated in the preceding pages of this rider.

The following provisions will supplement and modify the provisions on the preceding pages of this rider, unless otherwise specifically stated in such preceding provisions or unless inconsistent with such preceding provisions:

DEFINITION OF FUNDS — **The Funds referred to in this rider are:**

(a) The proceeds payable upon receipt at the Company's Home Office of due proof of the Insured's death.

(b) The principal sum under Option 1 or the unpaid principal and interest under Option 4, remaining at a beneficiary's death, if such Option was in settlement of any part of a Fund to which such beneficiary had become entitled.

(c) Any payments for the period specified for Option 2 or period certain for Option 3 to which a beneficiary had become entitled and which remain unpaid at such beneficiary's death. At such death the commuted value, based on the annual interest rate provided for Option 1, of such future payments will be paid in a single sum.

DEATH OF BENEFICIARY — **If no beneficiary is living upon receipt at the Home Office of due proof of the Insured's death, the proceeds will be payable in a single sum to the executors or administrators of the Insured. The amount payable at the death of a beneficiary will be the Fund provided for in (b) or (c) of "Definition of Funds". The Fund payable at the death of the last survivor of the beneficiaries will be payable in a single sum to the executors or administrators of such last survivor.**

SUPPLEMENTARY CONTRACT NOT TRANSFERABLE — **Neither the supplementary contract nor any of its benefits will be transferable or subject to surrender or anticipation, or to the debts of any person or to legal process, except as otherwise provided by law.**

ACCRUED INTEREST UNDER OPTION 1 — **On any principal sum under Option 1 at a beneficiary's death which will then be settled by Option 1, interest will continue to be paid on the same due dates, the first payment after such death including accrued interest from the last due date preceding death. With any part of the principal sum payable in a single sum or settled by another Option at the termination of Option 1, accrued interest from the last due date will be payable, or settled, as the case may be.**

EFFECT OF DOUBLE INDEMNITY ON OPTION 4 — **Any amount payable under any Double Indemnity provision will not change the amount of each payment under Option 4 but will increase the period of payments or amount payable upon termination of such option.**

The following provisions will always supplement and modify the provisions on the preceding pages of this rider:

AMOUNT TO BE SETTLED — **The settlement provided for in this rider will be effective for any amount payable even though such amount may be less than the face amount of this Policy, any policy provision for a single sum to the contrary notwithstanding. The proceeds referred to above will include the proceeds of any Double Indemnity provision issued in connection with the policy.**

SURRENDER OR WITHDRAWAL OR AUTOMATIC TERMINATION — **If a right of withdrawal is provided for, no withdrawal of less than $250. may be made. Upon each withdrawal or upon any automatic payment or other settlement of any part of the principal sum under Option 1, the corresponding part of Option 1 will terminate and if any balance under Option 1 would be less than $1000. payment or settlement of all of such principal sum will be made at such time. Under Option 4, withdrawals will decrease the period of payment but will not change the amount of each periodical payment. Any right of withdrawal or surrender will be exercised by written notice to the Company at its Home Office, accompanied by the supplementary contract. If the policy or this rider provides for deferment of the surrender value of the supplementary contract, such provision will apply to withdrawals.**

THIRTY YEAR LIMITATION ON DURATION OF SETTLEMENT — **No option will begin or continue after the end of thirty years from the date of the supplementary contract unless it is payable to the beneficiary entitled upon receipt of due proof of the Insured's death to the part of the proceeds settled by such option or unless it is Option 3 and the beneficiary whose age determines the amount of income is living. If any option terminates at the end of such thirty years or at the later death of a beneficiary designated in the preceding sentence, the then remaining principal sum and interest, if the terminated option is Option 1 or 4, or the then commuted value, based on the annual interest rate provided for Option 1, if the terminated option is Option 2 or 3 will be payable in a single sum to the beneficiary who received the last income payment or if such beneficiary is not then living to the other beneficiaries as provided for herein.**

CHILDREN OF A BENEFICIARY — **If provision is made under "Beneficiary for all Funds" that the living children of a deceased beneficiary will take such beneficiary's share and if such beneficiary dies during the settlement of such beneficiary's share of a Fund, any living children of such beneficiary will take all of the Fund provided for in (b) or (c) of "Definition of Funds" at such beneficiary's death, divided equally.**

PAYMENTS AT LEAST $10. — **If any payment requested for any beneficiary is less than $10., the periodical payments may be adjusted to payments to each beneficiary in amounts not less than $10. If annual payments to each beneficiary are less than $10., payment may be made in a single sum.**

(See other side of this sheet)

INTEREST MORE OFTEN THAN ANNUALLY UNDER OPTION 1

If the policy provides under Option 1 for annual interest only, each guaranteed monthly, quarterly, or semi-annual interest payment will be $2.47, $7.43, or $14.90, respectively, per $1000.

PAYMENT TO TRUSTEE

If this rider provides for payment to any trustee, the Company will not be responsible for any failure of the trustee to perform such trustee's duties as trustee, nor for the application or disposition of any money paid to such trustee and payment to such trustee will fully discharge the Company for the amount so paid.

EVIDENCE AS TO FACTS

The Company, in determining the name, date of death, or other facts relating to any person, may rely solely on any written evidence satisfactory to it, and, in making any payment in reliance thereon, will be fully protected.

CHANGE OF BENEFICIARY

Any subsequent change of beneficiary will revoke this designation.

RIGHTS UNDER POLICY

During the lifetime of the Insured the right to change the beneficiary and all other rights, benefits, options, and privileges conferred by this Policy or allowed by the Company, including any endowment proceeds, belong exclusively to said children of the Insured, jointly the survivors or survivor, or if none is living, to the children of said children of the Insured, jointly, the survivors or survivor, or if none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

Effective as of NOV 26 1944 Recorded and signed at New York, N. Y.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

Willard V. Johns
Secretary

[fol. 38] IN UNITED STATES DISTRICT COURT

EXHIBIT B TO STIPULATION OF FACTS

199 S
Life—Single Premium
January, 1932

Philadelphia

No. 4,385,336

The Mutual Life Insurance Company of New York

ANNUAL DIVIDEND
SINGLE PREMIUM LIFE POLICY

On the Life of

Mary H. Haines

Amount, $ 100000.

Date, October 10th 19 34

Single Premium, $ 90642.00

Policy No. 4,885,836 Amount, $ 10000. Page 1

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

(First Policy issued February 1st, 1843)

Notice has been received that the name of Robert B.Haines one of the beneficiaries hereunder is Robert B. Haines instead of as herein stated.
The Mutual Life Insurance Co.
New York,N.Y. May 29, 19[illegible]
Secretary.

WILL PAY

to the Insured's beneficiaries specified in the "Designation of Beneficiary" clause endorsed on page 2 hereof, the Beneficiary,

DEATH BENEFIT ONE HUNDRED THOUSAND Dollars.
(Face Amount of this Policy)

upon receipt of due proof of the death

of Mary H. Haines, the Insured.

[fol. 39]

This Policy also provides for

GENERAL PROVISIONS

Optional Modes of Settlement (Section 1),
Annual Dividends (Section 2),
Loans (Section 3),
Cash Value (Section 4).

This Policy is issued in consideration of the application and of the payment of the single premium of

SINGLE PREMIUM NINETY THOUSAND SIX HUNDRED FORTY TWO Dollars.

When the premium on this Policy is paid to the Company, it will be acknowledged either by a receipt signed by the Treasurer and countersigned by the Agency Cashier, or by endorsement on the Policy by the Company at its Home Office. Possession of this Policy is not otherwise evidence of the payment of such premium.

The succeeding pages 2 and 3 of this Policy are a part of this contract.

In Witness Whereof, the Company has caused this Policy to be executed this Tenth day of October 19 34.

L.S. [signature] Secretary.

David F. Houston. President.

Countersigned [signature] Registrar.

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33-37
SINGLE PREMIUM LIFE

AMOUNT OF INSURANCE PAYABLE AT DEATH ANNUAL DIVIDENDS SINGLE PREMIUM

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Section 1. Optional Modes of Settlement.

The proceeds of this Policy, upon maturity as a death claim or upon surrender, as the case may be, may, if so elected, be settled by one of the following optional Modes of Settlement instead of being paid in one sum:—

Option 1.—By the Company's holding the proceeds as a principal sum payable at the death of the payee, the Company meanwhile paying monthly interest (with a final interest payment to the date of such death) at three per cent a year plus participation in excess interest at such rate as the Company may determine for each year;

Option 2.—By payment of equal monthly instalments for the number of years elected, in accordance with the table on page 3. Instalments will be increased by participation in excess interest over three per cent a year at such rate as the Company may determine for each year;

Option 3.—By payment of equal monthly instalments for five, ten, or twenty years certain, as elected, and for the remaining lifetime of the payee, in accordance with the table on page 3. Instalments for the period certain will be increased by participation in excess interest over three per cent a year at such rate as the Company may determine for each year;

Option 4.—By payment of equal monthly instalments of the amount specified in the election as long as the proceeds, together with interest thereon as provided for in Option 1, shall suffice, with a final payment of any balance less than one such instalment.

Under Option 1 the first interest payment will be due at the end of one month from the date when the proceeds become payable. Under Options 2, 3, and 4 the first instalment will be due when the proceeds become payable.

Note.—If requested in the election, payment of interest under Option 1 or of instalments under Option 2, 3, or 4 will be made quarterly, semi-annually, or annually instead of monthly. The first payment of interest under Option 1 will be due at the end of three months, six months, or one year according as interest payments are quarterly, semi-annual, or annual. The first instalment under Option 2, 3, or 4 will in all cases be due when the proceeds become payable.

Method of Election.—An optional Mode of Settlement can be elected, or a previous election revoked or changed, only by written notice to the Company at its Home Office accompanied by the Policy for endorsement.

Note.—When a payee becomes entitled to a single sum, he may elect one of these options.

General Provisions.—Joint or contingent payees may be named under the above options within such limitations as may be prescribed by the Company, except that under Option 3 there cannot be joint payees and the instalments to contingent payees will not be payable beyond the period certain.

These optional Modes of Settlement are not available if a corporation, association, partnership, or estate is the payee, nor if the guaranteed interest payments or instalments will, irrespective of dividends or indebtedness, be less than $10 each.

If any of the above options has been elected, a supplementary contract bearing the date on which the proceeds of the Policy become payable and providing for the settlement elected will be issued.

Surrender or Transfer of Supplementary Contract.—Unless otherwise specified in the election, neither the supplementary contract nor any of the benefits accruing thereunder shall be transferable or subject to surrender, commutation, or encumbrance, except that at the death of the last surviving payee the then surrender value as defined below shall be payable to the executors or administrators of such payee.

The surrender value of the supplementary contract shall be as follows:

Option 1.—The principal sum with any accrued interest;

Options 2 and 3.—The commuted value, computed at three per cent interest compounded annually, of future instalments certain. Under Option 3 no such surrender may be made during the lifetime of the original payee;

Option 4.—Such part of the proceeds of the Policy and interest thereon as shall not have been paid in instalments.

Section 2. Annual Dividends.

The share of the divisible surplus accruing on this Policy shall be allotted as a dividend annually on each anniversary of its date.

Each such dividend may be either:—

1. Used to purchase a paid-up participating addition to the sum insured, herein called dividend addition, which shall be automatically added on the date of allotment and will continue in force unless and until one of the other options be duly elected; or,

2. Paid in cash; or,

3. Deposited with the Company at interest within ninety days from date of allotment (called dividend deposit). Interest will be credited at such rate as may be determined by the Company, but never less than three per cent a year, and will be added to existing dividend deposits annually. Dividend deposits existing at the death of the Insured shall be then payable to the beneficiary.

At any time any dividend additions may be surrendered for the full reserve thereon or any accumulated dividend deposits may be withdrawn.

Post Mortem Dividend.—Upon the death of the Insured a cash dividend will be credited to this Policy for the fraction of the policy year elapsed before such death.

Section 3. Loans.

At any time while this Policy is in force, the Company will, upon receipt of the Policy and a loan agreement satisfactory to the Company and on the sole security of this Policy, loan an amount which with interest shall be within the limit of the cash value of this Policy on the due date of the loan.

Any existing indebtedness to the Company on the Policy shall be paid out of such loan.

Interest on the loan shall be at the rate of six per cent a year payable on the due date of the loan provided for in the loan agreement and on each anniversary of the date of the Policy thereafter. If this interest is not paid when due it shall be added to the existing loan and bear interest at the same rate. Failure to repay the loan or pay interest shall not avoid the Policy unless the total indebtedness, including accrued interest, shall equal or exceed the cash value of the Policy, in which case the Policy shall become void thirty-one days after notice shall have been mailed to the Insured and any assignee of record at the Home Office of the Company at their last known addresses.

The loan, with accrued interest, or any part thereof not less than $10, may be repaid at any time prior to the date when due.

Section 4. Cash Value.

At any time after this Policy shall have been one year in force, this Policy may be surrendered for its net cash value. Such net cash value shall be the cash value as defined below less any indebtedness to the Company hereon.

The cash value at any time shall be the reserve at such time for the face amount of this Policy and for any dividend additions hereto increased by any accumulated dividend deposits and less a surrender charge of not more than two per cent of the face amount of this Policy.

After the Policy has been ten years in force there shall be no surrender charge.

Section 5. Table of Cash and Loan Values.

These values are computed in accordance with the provisions of Sections 3 and 4 and are on the assumption that there are no dividends or indebtedness.

Any dividend additions or dividend deposits will increase such values and any indebtedness to the Company on this Policy will decrease such values as provided in the above mentioned sections.

Values for intermediate periods will be calculated as provided in Sections 3 and 4.

At End of Policy Year	FOR EACH $1,000 FACE AMOUNT Cash Value (Also Loan Value as Explained in Section 3)	At End of Policy Year	FOR EACH $1,000 FACE AMOUNT Cash Value (Also Loan Value as Explained in Section 3)
1	$831.30	14	$951.58
2	842.99	15	957.49
3	854.06	16	962.31
4	864.92	17	966.33
5	875.60	18	970.87
6	883.63	19	XXXXXX
7	894.09	20	
8	904.51	21	
9	914.82	22	
10	924.88	23	
11	932.02	24	
12	938.75	25	
13	945.23	30	

NOTE.—The loan value stated in the above table for the end of a policy year will, less interest, be available during such year as provided in Section 3.

Section 6. Reserves.

The reserve held for the face amount of this Policy and for any dividend additions, and the reserves mentioned in this Policy shall be computed in accordance with the American Experience Table of Mortality assuming interest at the rate of three per cent a year.

DESIGNATION OF BENEFICIARY: The Insured's children, Isabella H. Miller, Margaret W. Haines Robert B. Haines and Charles H. Haines, the Fidelity-Philadelphia Trust Company of Philadelphia, Pennsylvania, as trustee, or its successor trustee under a trust agreement dated May 8th 1934, made by and between the Insured and said Fidelity-Philadelphia Trust Company of Philadelphia, Pennsylvania, and the executors, or administrators of the last survivor of said children of the Insured and of the children of said children of the Insured, all as provided in the Mode of Settlement attached hereto.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

New York, N.Y. October 10th 1934

Secretary.

Endorsement attached to and forming a part of policy No. 4,885,836
issued by The Mutual Life Insurance Company of New York.

Mode of Settlement.

It is agreed
~~The insured has elected~~ that if this policy matures as a claim by death, settlement of the amount payable shall be made as follows, provided, however, that any change of beneficiary hereunder shall constitute a revocation of this election of Mode of Settlement:

I. PAYEES:

Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines, children of the Insured, are hereinafter referred to as the payees.

II. IF ANY OF THE PAYEES OR ANY CHILD OF ANY OF THE PAYEES SHALL SURVIVE THE INSURED:

The amount payable at the death of the Insured shall be divided into such number of equal parts as shall equal the number of the payees who shall be living at the death of the Insured plus the number of the payees who shall have predeceased the Insured and who shall leave a child or children living at the death of the Insured. One such part shall be apportioned to each then living payee and any remaining part or parts shall be apportioned to The Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee or its successor trustee under a trust agreement dated May 8, 1934 made by and between the Insured and said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania.

Any amount apportioned at the death of the Insured to any payee shall be settled by Mode of Settlement (4) with quarterly payments to such payee at the rate of $12. for each $1,000 of the amount apportioned to such payee at the death of the Insured.

Any amount apportioned at the death of the Insured to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee, or its successor trustee, under said trust agreement, shall be payable in a single sum.

If any payee shall die during the continuance of said Mode of Settlement (4) and :

(a) If any child of such payee shall be living at the death of such payee, each remaining payment under said Mode of Settlement (4) in favor of such payee and any part of any remaining payment under said Mode of Settlement (4) in favor of any other payee to which such payee became entitled by reason of the death of any other payee shall be apportioned to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee, or its successor trustee, under a trust agreement dated May 8, 1934 made by and between the Insured and said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania.

(b) If no child of such payee shall be living at the death of such payee, each of the remaining payments under said Mode of Settlement (4) in favor of such payee and any part of any remaining payment under said Mode of Settlement (4) in favor of any other payee to which such payee became entitled by reason of the death of any other payee, shall be divided into such number of equal parts as shall equal the number of the other payees who shall be living at the death of such payee plus the number of the other payees who shall have predeceased such payee and who shall leave a child or children living at the death of such payee. One such part shall be apportioned to each then living other payee and any remaining part or parts shall be apportioned to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee, or its successor trustee, under a trust agreement dated May 8, 1934, made by and between the Insured and said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania.

The part of each remaining payment under said Mode of Settlement (4) apportioned at the death of any payee to any other payee shall be payable, as it becomes due, to such other payee, if such other payee shall be living on its due date.

At the death of any payee, such part of the then surrender value of the supplementary contract as shall correspond to the part of each remaining payment under said Mode of Settlement (4) then apportioned to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee, or its successor trustee, under said trust agreement, shall be payable in a single sum to said Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, as trustee, or its successor trustee, under said trust agreement, instead of such part of each remaining payment being payable when due.

If the last survivor of the payees shall die during the continuance of said Mode of Settlement (4) and if no child of any payee shall be living at the death of such last survivor, such settlement shall terminate at the death of such last survivor and the then surrender value of the supplementary contract shall be payable in a single sum to the executors or administrators of such last survivor.

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Endorsement attached to and forming a part of policy No. 4,885,836
issued by The Mutual Life Insurance Company of New York.

MODE OF SETTLEMENT (cont'd)

III. IF NONE OF THE PAYEES NOR ANY CHILD OF ANY OF THE PAYEES SHALL SURVIVE THE INSURED:

The amount payable at the death of the Insured shall be payable in a single sum to the executors or administrators of the last survivor of the payees and the children of the payees.

IV. IT IS AGREED THAT THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK shall not be responsible for any failure of said trustee or successor trustee to perform its duties as trustee, nor for the application or disposition of any moneys paid to such trustee, and payment to such trustee shall fully discharge The Mutual Life Insurance Company of New York for the amount so paid.

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(see page three)

Endorsement attached to and forming a part of policy No. 4,885,836
issued by The Mutual Life Insurance Company of New York.

V. **IT IS UNDERSTOOD AND AGREED THAT THE FOLLOWING PROVISIONS SHALL APPLY TO ALL MODES OF SETTLEMENT**

Designation of Mode of Settlement

(a) Any Mode of Settlement herein designated by number is the one bearing such number in the provision for Optional Modes of Settlement in this Policy;

Supplementary Contract not Transferable

(b) Unless and except as otherwise provided for herein, neither the supplementary contract nor any benefits accruing thereunder shall be transferable or subject to surrender, commutation, anticipation, or encumbrance, or in any way subject to the debts of any beneficiary or payee, or to legal process except as otherwise provided by law;

Evidence as to Payee

(c) The Company in determining the persons comprising any class mentioned in this Mode of Settlement, the names, addresses, ages, dates of death, or any other facts relating to any beneficiaries or other persons mentioned in this endorsement, either as a class or otherwise, may rely solely on any affidavit or other written evidence deemed satisfactory to it, and in making any payment or taking any action in reliance thereon shall be fully protected; and

Payments at Least $10

(d) If on the due date of any payment under any Mode of Settlement, the total guaranteed payment to any payee under the supplementary contract shall be less than $10, the Company may at its option, change the payments due after such date to the first of the following which shall make each such payment at least $10; viz, quarterly, semi-annual, or annual; the first such quarterly payment being payable three months from such due date, the first such semi-annual payment being payable six months from such due date, or the first such annual payment being payable one year from such due date.

VI. **IT IS UNDERSTOOD AND AGREED THAT THE FOLLOWING PROVISIONS SHALL APPLY TO THE MODE OF SETTLEMENT SPECIFIED IN THE MARGIN IF SUCH MODE OF SETTLEMENT HAS BEEN ELECTED**

[fol. 43]

Option (1)

(a) If any payee shall die during the continuance of Mode of Settlement (1) in favor of such payee, then at the death of such payee, (a) interest on any part of the principal sum then settled by Mode of Settlement (1) shall continue to be paid on the same due dates as under the Mode of Settlement in favor of such payee, and (b) accrued interest from the date of the last preceding interest payment on any part of the principal sum then payable in a single sum or settled by another Mode of Settlement shall be payable or settled, as the case may be, with such part.

Option (2)

(b) If any payee entitled to Mode of Settlement (2) at the death of the Insured shall die after such death but before receipt at the Home Office of the Company of due proof of such death, settlement shall be made by payment to the same payee or payees and in the same manner as hereinbefore provided for settlement had such payee so dying not survived the Insured.

Option (4)

(c) Unless and except as otherwise provided for herein, if any amount payable under any provision for Double Indemnity shall increase the amount settled by Mode of Settlement (4), it shall not increase the amount of the payments thereunder, but shall be used either: (a) to extend the period during which said Mode of Settlement (4) shall be in effect, or, (b) if, under the provisions of this endorsement, said Mode of Settlement (4) shall terminate before the principal and interest are exhausted, to increase the amount payable on the date of such termination.

Option (4)

(d) In no case shall the total payments in any supplementary contract year under Mode of Settlement (4) be less than the total interest credited thereunder for such year.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

New York, N. Y. October 10th 19 24

Secretary

Countersigned Registrar

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43.

QUESTIONS TO BE ANSWERED BY THE PERSON TO BE INSURED

(Whenever the word "Insured" is used in this application, it shall be construed as meaning "the person whose life is proposed for insurance".)

THIS APPLICATION is made to THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK herein called the Company. All the following statements and answers, and all those that the Insured makes to the Company's Medical Examiner, as a part of this application, are true, and are offered to the Company as an inducement to issue the proposed policy. (The insured expressly waives on behalf of himself or herself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has attended or examined, or who may hereafter attend or examine the Insured, from disclosing any knowledge or information which he thereby acquired.) The proposed policy shall not take effect unless and until delivered to and received by the Insured, the Beneficiary or by the person who herein agrees to pay the premiums, during the Insured's continuance in good health and unless and until the first premium shall have been paid during the Insured's continuance in good health; except in case a conditional receipt shall have been issued as hereinafter provided.

Name in full of Insured:
Given Name, Middle Name (if any) and Surname (Print Plainly) Mary H Haines

1. RESIDENCE OF INSURED — PERIOD Yrs. Mos.

Street and No. 156 School Lane — 40
Town, City or Village Phila Philadelphia
or ... miles in a ... direction
from ... on R. F. D. No. ...
County Philadelphia
State or Province Penna
Former residences reason

Business address of Insured 156 School Lane Phila
Name of firm or employer of Insured no employed
Nature of business of Insured ... so engaged ... yrs. ... mos.
Present occupation and duties of Insured At Home
Other occupations of Insured are: (If none, state None) no other
Former occupations of Insured: (If none, state None)
Nature Home as Wife Place 156 School Lane Phila Pa

Place of birth of Insured Penn (State or C...)
Date of birth of Insured 11 9 (day of) ... 18...
Age of Insured nearest birthday ...
Send all communications
To 156 Sc...
P. O. Address ...

2. The Insured does not contemplate either (a) going to a foreign or tropical country, or (b) changing his occupation. no

3. The Insured has not made, nor does he contemplate making aviation flights, or aeronautical ascensions. (If any exceptions furnish regular aviation form.) no

4. No negotiations for other insurance on the life of the Insured, nor any application for reinstatement of insurance on the life of the Insured, are now pending or contemplated. yes

5. No application or examination for life insurance on the life of the Insured has ever been declined or postponed by any company or association, nor has any company offered a policy differing in plan, amount or premium from that applied for. no

Exceptions to 2, 3, 4 and 5, to be noted in No. 6.

6. Details of Exceptions to Questions, 2, 3, 4, 5. (If none, state None) 2, 3 & 5 have application for insurance amount to Two other Co's Total $600 000

7. The following is all the insurance now in force on the Insured's life: (If none, state None).

Name of Company or Association	Amount
Mutual Life	50000

8. (To be answered if Waiver of Premium applied for.) The total amount of disability income in all companies payable in the event of disability is $ ... annually.

9. (a) Amount $ 300 000 00 (b) Premiums Single

10. Plan (State fully) Life (Single Premium)

Answer YES, NO — Waiver of Premium no — Double Indemnity no

11. It is agreed that if the Company is unwilling to issue a policy for plan and amount applied for, this application shall be for such plan and amount as may be issued by the Company.

12. If Beneficiary predeceases Insured policy will be payable to Insured's estate unless otherwise herein specified or unless Beneficiary be Creditor or Partner. If Endowment payee at maturity is Endowment
(a) Name (in full) of Beneficiary If a corporation give head office and state of incorporation Isabella H Miller, Robert B Haines Margaret H Haines Charles H Haines children if living surviving wife
(b) P. O. Address of Settlement & Referred to Letters 2/8/34 and 3/6/34
(c) Relationship to the Insured or Insurable Interest Children & Grandchildren

13. All benefits, options, rights, and privileges conferred by the policy or allowed by Company, including the right to change Beneficiary are reserved to Beneficiary except right to ... (Insert right) ... is reserved to Beneficiary. (Insert Insured or Beneficiary) (Insert Insured or Beneficiary)

14. $ ... in cash has been paid to the Soliciting Agent and a conditional receipt No. ..., dated ..., signed by the Secretary of the Company, and countersigned by the agent has been issued making the insurance in force from such date, provided this application shall be approved.

15. Will any insurance issued under this application replace in whole or in part, insurance in this or any other Company? no (Answer YES or NO. If yes, give details)

It is agreed that in the event of the self-destruction of the Insured whether sane or insane during the first year following the date of issue of the policy hereby applied for the Company's liability shall be limited to the amount of the premiums paid. It is agreed that no Agent or other person except the President, a Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits under any policy issued hereunder or accepting any representations or information not contained in this application, or to make, or modify any contract of insurance, or to extend the time for payment of a premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements.

This application is made at the instance and request of the undersigned, who, it is agreed, will pay all premiums out of his, her or its funds, and who ratifies the representations, statements, answers and agreements contained in such application and in the statements to Medical Examiner.

Signature in full of Insured Mary H Haines
Dated at Phila Pa on 4/5 1934
Signature of Parent or Guardian ... I consent to the above application:
(Required if Insured a minor under age 15)

Signature in full of person or persons who will pay the premiums
(If a corporation, an officer other than Insured to sign for corporation, WITH TITLE.)
(Foregoing to be executed only when the application is made at the instance and request of some one other than the person to be insured and who will pay the premiums.)

I have known the Insured for some time years and saw her sign this application.
So far as known to me any insurance issued under this application will not replace in whole or part insurance in this or any other Company.
L. P. Sadamare Soliciting Agent.

For H. O. Use APR 3124

Upon request the policy may be antedated for a period not to exceed six months from date of examination unless prohibited by law.

Monthly and Annual Instalments for Each $1,000 of Proceeds of Policy under Optional Modes of Settlement 2 and 3

The semi-annual and quarterly instalments are 50.37% and 25.28% respectively of the annual instalment

OPTION 2			OPTION 3													
				5 Years Certain		10 Years Certain		20 Years Certain			5 Years Certain		10 Years Certain		20 Years Certain	
Number of Years' Instalments	Each Monthly Instalment	Each Annual Instalment	Age of Payee When Proceeds Payable	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Age of Payee When Proceeds Payable	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment	Each Monthly Instalment	Each Annual Instalment
2	$42.86	$507.39	10 and under	$3.81	$44.85	$3.75	$44.21	$3.58	$42.20	49	$5.26	$62.01	$5.17	$60.51	$4.90	$54.20
3	28.69	343.23	11	3.83	45.07	3.77	44.41	3.59	42.26	50	5.45	63.68	5.24	61.49	4.95	54.71
4	22.06	261.19	12	3.85	45.30	3.79	44.62	3.61	42.54	51	5.64	64.70	5.32	62.33	4.99	55.24
5	17.91	212.60	13	3.87	45.54	3.81	44.84	3.62	42.71	52	5.84	65.83	5.41	63.20	4.74	55.77
6	15.14	179.82	14	3.89	45.78	3.83	45.07	3.64	42.90	53	5.74	67.08	5.49	64.20	4.78	56.30
7	13.16	155.93	15	3.91	46.03	3.85	45.29	3.65	43.08	54	5.85	68.28	5.58	65.35	4.82	56.84
8	11.68	138.31	16	3.94	46.27	3.87	45.53	3.67	43.27	55	5.97	69.57	5.68	66.44	4.87	57.37
9	10.53	124.69	17	3.96	46.52	3.89	45.76	3.69	43.47	56	6.09	70.85	5.78	67.57	4.91	57.90
10	9.61	113.82	18	3.98	46.77	3.91	45.99	3.70	43.65	57	6.22	72.49	5.88	68.75	4.96	58.43
11	8.88	104.93	19	4.00	47.03	3.93	46.23	3.72	43.87	58	6.35	73.98	5.98	69.96	5.00	58.96
12	8.24	97.54	20	4.02	47.28	3.95	46.48	3.74	44.07	59	6.49	75.53	6.09	71.24	5.05	59.48
13	7.71	91.28	21	4.05	47.55	3.97	46.74	3.76	44.28	60	6.64	77.22	6.21	72.55	5.09	60.01
14	7.26	85.95	22	4.07	47.84	4.00	47.01	3.78	44.52	61	6.80	78.98	6.33	73.91	5.13	60.54
15	6.87	81.33	23	4.10	48.14	4.02	47.29	3.80	44.76	62	6.96	80.85	6.44	75.31	5.17	61.07
16	6.53	77.29	24	4.12	48.45	4.05	47.59	3.82	45.00	63	7.13	82.81	6.57	76.75	5.20	61.57
17	6.23	73.74	25	4.15	48.77	4.07	47.89	3.84	45.26	64	7.31	84.87	6.70	78.23	5.24	61.99
18	5.96	70.52	26	4.18	49.12	4.10	48.22	3.86	45.51	65	7.51	87.03	6.83	79.75	5.27	62.39
19	5.73	67.78	27	4.21	49.47	4.13	48.56	3.89	45.79	66	7.71	89.31	6.98	81.31	5.30	62.79
20	5.51	65.26	28	4.25	49.85	4.16	48.91	3.91	46.07	67	7.93	91.69	7.13	82.89	5.33	63.21
21	5.32	63.06	29	4.28	50.24	4.19	49.28	3.94	46.37	68	8.14	94.19	7.28	84.50	5.36	63.57
22	5.15	60.92	30	4.32	50.65	4.23	49.66	3.96	46.67	69	8.37	96.81	7.37	86.14	5.38	63.97
23	4.99	59.04	31	4.35	51.08	4.26	50.07	3.99	46.99	70	8.61	99.56	7.51	87.79	5.40	64.34
24	4.84	57.28	32	4.38	51.52	4.30	50.49	4.02	47.32	71	8.86	102.43	7.66	89.46	5.42	64.66
25	4.71	55.76	33	4.42	52.01	4.33	50.93	4.05	47.66	72	9.13	105.44	7.79	91.12	5.42	64.98
26	4.59	54.31	34	4.46	52.50	4.37	51.39	4.08	48.01	73	9.40	108.57	7.98	92.79	5.42	64.98
27	4.47	52.96	35	4.50	53.02	4.42	51.87	4.11	48.36	74	9.69	111.84	8.07	94.44	5.42	64.98
28	4.37	51.74	36	4.54	53.56	4.46	52.38	4.14	48.75	75	9.99	115.25	8.21	96.08	5.42	64.98
29	4.27	50.60	37	4.58	54.13	4.51	52.90	4.17	49.14	76	10.30	118.78	8.34	97.65	5.42	64.98
30	4.18	49.53	38	4.67	54.73	4.55	53.45	4.21	49.54	77	10.63	122.44	8.47	99.21	5.42	64.98
			39	4.73	55.36	4.60	54.03	4.24	49.96	78	10.96	126.22	8.59	100.71	5.42	64.98
			40	4.78	56.02	4.65	54.63	4.28	50.38	79	11.30	130.13	8.71	102.14	5.42	64.98
			41	4.84	56.71	4.71	55.28	4.32	50.82	80	11.64	134.14	8.82	103.51	5.42	64.98
			42	4.91	57.43	4.77	55.91	4.35	51.27	81	12.00	138.26	8.93	104.80	5.42	64.98
			43	4.97	58.19	4.83	56.60	4.39	51.73	82	12.36	142.44	9.03	104.80	5.42	64.98
			44	5.04	58.98	4.89	57.31	4.43	52.20	83	12.73	146.70	9.03	104.80	5.42	64.98
			45	5.12	59.82	4.95	58.06	4.48	52.69	84	13.09	151.00	8.98	104.80	5.42	64.98
			46	5.19	60.71	5.02	58.84	4.53	53.18	85	13.46	155.24	8.98	104.80	5.42	64.98
			47	5.27	61.64	5.09	59.66	4.58	53.68	86 and over	13.83	159.67	8.98	104.80	5.42	64.98

RIGHTS: Anything in this policy to the contrary notwithstanding, prior to the maturity of this policy, the Insured's children Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines, jointly the survivors or survivor, if none of said children be living then the living children of said children of the Insured, jointly or the survivors, or survivor, if none of the children of said children of the Insured be living then to the executors, administrators of the last survivor of said children of the Insured and the children of said children of the Insured, some of the beneficiaries may without the consent and to the exclusion of the Insured or any other beneficiary, receive, exercise and enjoy every benefit, option, right and privilege conferred by this policy or allowed by the Company.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

New York, October 10th 1934

Secretary.

[fol. 45]

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Section 7. Miscellaneous Provisions.

Residence and Travel.—This Policy is free from restrictions as to residence and travel.

Occupation.—This Policy is free from restrictions as to occupation.

Suicide.—In the event of the self-destruction of the Insured, whether sane or insane, within one year after the date of issue of this Policy, the amount payable shall be limited to an amount equal to the premium paid hereon.

Incontestability.—This Policy shall be incontestable after one year from its date of issue unless the Insured dies in such year, in which event it shall be incontestable after two years from its date of issue.

Misstatement of Age.—If the age of the Insured shall have been misstated, the amount payable by the Company shall be such as the premium paid would have purchased at the correct age.

Change of Beneficiary.—Unless otherwise provided by endorsement on this Policy or unless there be an existing assignment of this Policy other than to the Company, the beneficiary may be changed from time to time, while the Policy is in force, by written notice to the Company at its Home Office accompanied by the Policy for endorsement. Such change shall take effect upon endorsement of the Policy by the Company.

The interest of any beneficiary who dies before the Insured shall vest in the Insured unless otherwise provided in this Policy.

Rights of the Insured.—Except as may otherwise be specifically provided in this Policy or by endorsement on this Policy, the Insured may during his lifetime, without the consent and to the exclusion of the beneficiary, receive, exercise, and enjoy every benefit, option, right, and privilege conferred by this Policy or allowed by the Company.

Policy Settlement.—All sums payable by the Company under this Policy shall be payable at the Home Office of the Company in the City of New York.

In any settlement of this Policy at its maturity as a death claim or on surrender, any indebtedness to the Company on this Policy shall be deducted and surrender of the Policy to the Company will be required.

The Contract.—This Policy and the application, copy of which is attached, constitute the entire contract.

All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid or be used in defence to a claim under this Policy unless contained in the written application and a copy of the application is attached to the Policy when issued.

Assignment.—The Company shall not be charged with notice of any assignment of any interest in this contract until the original assignment or a certified copy thereof has been filed with the Company at its Home Office.

The Company assumes no responsibility as to the validity or effect of any assignment.

All assignments shall be subject to any indebtedness to the Company on account of or secured by this Policy.

Notice.—No agent or other person except the President, a Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits or accepting any representations or information not contained in the written application for this Policy, or to make or modify this contract, or to extend the time for payment of the premium, or to waive any forfeiture or any of the Company's rights or requirements.

A-510-32M-3-33

2559

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

RECEIVED $ 90642.00 FROM THE OWNER OF

POLICY NO. 4881836

IN PAYMENT OF THE SINGLE PREMIUM DUE Oct. 10 1934

COUNTERSIGNED Oct 15 1934 19

AT [illegible]

[signature]
AGENCY CASHIER

[signature]
PRESIDENT

NOTE: "This receipt is not binding upon the Company until countersigned by the Company's Agency Cashier through whom the amount is collected, nor until the premium has actually been paid in cash."

Rider Form XI-A—Ed. 2-43

W. C. H. JT 6-14-44 tf-2

Rider attached to and forming a part of Policy No. 4885988 on the life of Mary H. Haines issued by THE MUTUAL LIFE INSURANCE COMPANY of NEW YORK.

DESIGNATION OF BENEFICIARY, INCOME SETTLEMENT, AND RIGHTS UNDER POLICY

The persons designated under "Beneficiary for all Funds" will become entitled in the order and proportions stated below to each of the Funds defined in this rider, if living when each such Fund becomes payable, and each such Fund will be settled as provided below.

BENEFICIARY FOR ALL FUNDS at the time designated

Upon receipt of due proof of the Insured's death:

One-fourth of such Funds to the Insured's daughter, Margaret W. Haines, if living, if not, to such of the children of said Margaret W. Haines as shall be living, share and share alike, or if none is living, to the Insured's other children, Robert B. Haines, 3rd, Charles H. Haines, and Isabelle H. Miller, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

One-fourth of such Funds to said Robert B. Haines, 3rd, if living, if not, to such of the children of said Robert B. Haines, Jr. as shall be living, share and share alike, or if none is living, to Mary T. Haines, spouse of said Robert B. Haines, 3rd, if living if not, to the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

One-fourth of such Funds to said Charles H. Haines, if living, if not, to such of the children of said Charles H. Haines as shall be living, share and share alike, or if none is living, to Margery Speakman Haines, spouse of said Charles H. Haines, if living, if not, to the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

One-fourth of such Funds to said Isabelle H. Miller, if living, if not, to such of the children of said Isabelle H. Miller as shall be living, share and share alike, or if none is living, to William McE. Miller, spouse of said Isabelle H. Miller, if living, if not, to the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

At the death during Option 5, of each of said children of the Insured:

Such of the children of such child of the Insured as shall be living, share and share alike, or if none is living, the above-named spouse, if any, of such child of the Insured, if such spouse is living, if not living or if no spouse of such child of the Insured is named above, the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the

(see next page of this rider)

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Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, the executors or administrators of such child of the Insured.

At the death of each child of any of said children of the Insured during Option 3:

Such of the other children of such child of the Insured as shall be living, share and share alike, or if no other child of such child of the Insured is living, to the above-named spouse, if any, of such child of the Insured, if such spouse is living, if not living or if no spouse of such child of the Insured is named above, the others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured is deceased, the living children of such child of the Insured, if any, shall take his or her share divided equally. If none is living, the executors or administrators of such child of such child of the Insured.

At the death, during Option 3, of each of said Mary T. Haines, said Margery Speakman Haines and said William McK. Miller:

The others of said children of the Insured, share and share alike, the survivors or survivor, provided that if any of the others of said children of the Insured, is deceased, the living children of such child of the Insured, if any, shall take his or her share, divided equally. If none is living, the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

Settlement of any Part of the Funds to which each of said children of the Insured becomes entitled at the time designated

Upon receipt of due proof of the Insured's death:

Option 2 with monthly payments and with twenty years certain.

At any other time:

Single sum.

Settlement of any Part of the Funds to which each child of each of said children of the Insured becomes entitled at the time designated

Upon receipt of due proof of the Insured's death:

Option 3 with monthly payments and with twenty years certain.

At the death, during Option 3, of the one of said children of the Insured who is a parent of such child; or at the death, during Option 3, of each other child of such child of the Insured:

Remaining payments shall be payable when due.

At any other time:

Single sum.

Settlement of any Part of the Funds to which each of said Mary T. Haines, said Margery Speakman Haines and said William McK. Miller becomes entitled at the time designated

Upon receipt of due proof of the Insured's death:

Option 3 with monthly payments and with twenty years certain.

At the death, during Option 3, of the one of said children of the Insured who is a spouse of such beneficiary; or at the death, during Option 3, of any child of such child of the Insured:

Remaining payments shall be payable when due.

(see next page of this rider)

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Page 8 of Designation of Beneficiary, Income Settlement and Rights under Policy, for Policy No. 4385826

Settlement of any Part of the Funds to which any other beneficiary becomes entitled at the time designated	At any time: Single sum.

(see next page of this rider)

[fol. 49]

The provisions of this rider together with the provisions of the section, if any, of this Policy providing for Income Settlement Options, Modes of Settlement, or Optional Modes of Settlement constitute the entire income settlement arrangement elected for this Policy, unless otherwise specifically stated in the preceding pages of this rider.

The following provisions will supplement and modify the provisions on the preceding pages of this rider, unless otherwise specifically stated in such preceding provisions or unless inconsistent with such preceding provisions:

DEFINITION OF FUNDS

The Funds referred to in this rider are:

(a) The proceeds payable upon receipt at the Company's Home Office of due proof of the Insured's death.

(b) The principal sum under Option 1 or the unpaid principal and interest under Option 4, remaining at a beneficiary's death, if such Option was in settlement of any part of a Fund to which such beneficiary had become entitled.

(c) Any payments for the period specified for Option 2 or period certain for Option 3 to which a beneficiary had become entitled and which remain unpaid at such beneficiary's death. At such death the commuted value, based on the annual interest rate provided for Option 1, of such future payments will be paid in a single sum.

DEATH OF BENEFICIARY

If no beneficiary is living upon receipt at the Home Office of due proof of the Insured's death, the proceeds will be payable in a single sum to the executors or administrators of the Insured. The amount payable at the death of a beneficiary will be the Fund provided for in (b) or (c) of "Definition of Funds". The Fund payable at the death of the last survivor of the beneficiaries will be payable in a single sum to the executors or administrators of such last survivor.

SUPPLEMENTARY CONTRACT NOT TRANSFERABLE

Neither the supplementary contract nor any of its benefits will be transferable or subject to surrender or anticipation, or to the debts of any person or to legal process, except as otherwise provided by law.

ACCRUED INTEREST UNDER OPTION 1

On any principal sum under Option 1 at a beneficiary's death which will then be settled by Option 1, interest will continue to be paid on the same due dates, the first payment after such death including accrued interest from the last due date preceding death. With any part of the principal sum payable in a single sum or settled by another Option at the termination of Option 1, accrued interest from the last due date will be payable, or settled, as the case may be.

EFFECT OF DOUBLE INDEMNITY ON OPTION 4

Any amount payable under any Double Indemnity provision will not change the amount of each payment under Option 4 but will increase the period of payments or amount payable upon termination of such option.

The following provisions will always supplement and modify the provisions on the preceding pages of this rider:

AMOUNT TO BE SETTLED

The settlement provided for in this rider will be effective for any amount payable even though such amount may be less than the face amount of this Policy, any policy provision for a single sum to the contrary notwithstanding. The proceeds referred to above will include the proceeds of any Double Indemnity provision issued in connection with the policy.

SURRENDER OR WITHDRAWAL OR AUTOMATIC TERMINATION

If a right of withdrawal is provided for, no withdrawal of less than $250. may be made. Upon each withdrawal or upon any automatic payment or other settlement of any part of the principal sum under Option 1, the corresponding part of Option 1 will terminate and if any balance under Option 1 would be less than $1000. payment or settlement of all of such principal sum will be made at such time. Under Option 4, withdrawals will decrease the period of payment but will not change the amount of each periodical payment. Any right of withdrawal or surrender will be exercised by written notice to the Company at its Home Office, accompanied by the supplementary contract. If the policy or this rider provides for deferment of the surrender value of the supplementary contract, such provision will apply to withdrawals.

THIRTY YEAR LIMITATION ON DURATION OF SETTLEMENT

No option will begin or continue after the end of thirty years from the date of the supplementary contract unless it is payable to the beneficiary entitled upon receipt of due proof of the Insured's death to the part of the proceeds settled by such option or unless it is Option 3 and the beneficiary whose age determines the amount of income is living. If any option terminates at the end of such thirty years or at the later death of a beneficiary designated in the preceding sentence, the then remaining principal sum and interest, if the terminated option is Option 1 or 4, or the then commuted value, based on the annual interest rate provided for Option 1, if the terminated option is Option 2 or 3 will be payable in a single sum to the beneficiary who received the last income payment or if such beneficiary is not then living to the other beneficiaries as provided for herein.

CHILDREN OF A BENEFICIARY

If provision is made under "Beneficiary for all Funds" that the living children of a deceased beneficiary will take such beneficiary's share and if such beneficiary dies during the settlement of such beneficiary's share of a Fund, any living children of such beneficiary will take all of the Fund provided for in (b) or (c) of "Definition of Funds" at such beneficiary's death, divided equally.

PAYMENTS AT LEAST $10.

If any payment requested for any beneficiary is less than $10., the periodical payments may be adjusted to payments to each beneficiary in amounts not less than $10. If annual payments to each beneficiary are less than $10., payment may be made in a single sum.

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(See other side of this sheet)

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INTEREST MORE OFTEN THAN ANNUALLY UNDER OPTION 1

If the policy provides under Option 1 for annual interest only, each guaranteed monthly, quarterly, or semi-annual interest payment will be $2.47, $7.43, or $14.90, respectively, per $1000.

PAYMENT TO TRUSTEE

If this rider provides for payment to any trustee, the Company will not be responsible for any failure of the trustee to perform such trustee's duties as trustee, nor for the application or disposition of any money paid to such trustee and payment to such trustee will fully discharge the Company for the amount so paid.

EVIDENCE AS TO FACTS

The Company, in determining the name, date of death, or other facts relating to any person, may rely solely on any written evidence satisfactory to it, and, in making any payment in reliance thereon, will be fully protected.

CHANGE OF BENEFICIARY

Any subsequent change of beneficiary will revoke this designation.

RIGHTS UNDER POLICY

During the lifetime of the Insured the right to change the beneficiary and all other rights, benefits, options, and privileges conferred by this Policy or allowed by the Company, including any endowment proceeds, belong exclusively to said children of the Insured, jointly the survivors or survivor, or if none is living, to the children of said children of the Insured, jointly, the survivors or survivor, or if none is living, to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured.

Effective as of JUN 26 1944 Recorded and signed at New York, N. Y.;

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

Willard V. Johns

Secretary.

[fol. 52] IN UNITED STATES DISTRICT COURT

EXHIBIT C TO STIPULATION OF FACTS

In case of any question under this policy, write the Company at Boston, Massachusetts, or any Agency of the Company.

I. J. SANTAMARIE

INSURANCE COUNSELLOR

123 S. BROAD ST., PHILA.

FILING BACK

John Hancock
MUTUAL
LIFE INSURANCE COMPANY
OF BOSTON, MASSACHUSETTS

Policy No. 2544451

ON LIFE OF

[illegible]

Amount $50,000 Age 77

LIFE POLICY MATURING AT DEATH

PREMIUM PAYABLE IN ONE SUM

ANNUAL DISTRIBUTION PERIOD

Premium $43,491.00

Disability Premium

Accidental Death Benefit Premium

Payable in One Sum

As Provided in the Policy

The Assured is hereby notified that by virtue of this policy he is a member of the JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, and is entitled to vote, either in person or by proxy, at any and all meetings of said Company. The annual meetings are held at its Home Office on the second Monday of February in each year, at twelve o'clock noon.

It is not necessary to employ any firm or person to collect the proceeds under this policy.

No. 2544451

Amount $50,000

THE

John Hancock

MUTUAL

LIFE INSURANCE COMPANY

OF BOSTON, MASSACHUSETTS

hereby insures the life of

MARY E HAINES

and agrees to pay FIFTY THOUSAND Dollars,

the sum insured, less any indebtedness to the Company hereon, upon due proof of the death of the Insured while the policy is in full force, and upon its surrender at the Company's Home Office in Boston, subject to the conditions and provisions hereinafter recited,

BENEFICIARY CHANGED
ENDORSEMENT

to ISABELLA E MILLER, ROBERT B HAINES, JR. MARGARET W HAINES AND CHARLES H HAINES--CHILDREN if living,

or to such other beneficiary as may be finally substituted under the conditions hereof, or if no such beneficiary be then living, then to the executors or administrators of the Insured.

This insurance is granted in consideration of the application herefor, a copy of which is attached hereto, and made a part of this contract, and of the payment of a single premium of

FORTY-THREE THOUSAND FOUR HUNDRED NINETY-ONE AND 00/100 Dollars

POLICY AND APPLICATION THE ENTIRE CONTRACT This policy and the application herefor constitute the entire contract between the parties, and all statements made by the Insured or on his behalf shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defense to a claim hereunder unless it is contained in a written application herefor, and a copy of such application attached to this policy when issued. No modification or alteration of this policy or endorsement hereon will be valid unless made by the President, a Vice President, the Secretary or an Assistant Secretary, and no other person is authorized to modify or waive any of the terms and conditions of this policy, nor to extend the time for payment of premium or other moneys due the Company, or to bind the Company by making any promise or by accepting any representation or information not contained in the application for this policy.

INCONTESTABILITY This policy shall be incontestable after it has been in force during the lifetime of the Insured for two years from its date of issue, except as to provisions and conditions relating to benefits in the event of total and permanent disability and those granting additional insurance specifically against death by accident; but in case the age has been misstated, the amount payable hereunder shall be that which the premium paid would have purchased at the correct age. If the Insured shall die during the first two years of this policy by his own hand or act, while sane or insane, the liability of the Company shall be limited to the premium paid hereon.

[fol. 53]

The Conditions and Provisions hereinafter set forth are hereby made a part of this Contract.

In Witness Whereof, *the JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY has, by its President and Secretary, executed and delivered this contract and caused the same to be duly countersigned, at Boston, Massachusetts, on this* FIFTEENTH *day of* OCTOBER *A. D.* 1934 *, which is the date of issue of this policy.*

Charles A Diman
Secretary.

Walter I. Cook
President.

Countersigned D J Kidder *Policy Registrar.*

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BPL. Bd. 1-1934 Form 436 O 34 700

LIFE POLICY
MATURING AT DEATH.

PREMIUM PAYABLE
IN ONE SUM.

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Payment of Premium.—The premium hereunder is payable on delivery of the policy, at the Home Office of the Company, or to a duly authorized agent presenting the official receipt signed by the President or Secretary, and countersigned by the agent designated on such receipt.

Change of Beneficiary.—If the right has been reserved, the Insured may change the beneficiary from time to time, subject to the rights of any assignee, by written request upon the blanks of the Company filed at its Home Office, but such change shall take effect only upon endorsement hereon.

Annual Surplus Distribution.—At the end of each policy year while this policy is in force, there shall be distributed hereon such share of the divisible surplus as may be apportioned hereto by the Company.

Distribution Options.—Such surplus distributions may at the election of the holder be—(*a*) taken in cash, (*c*) left on deposit with the Company to accumulate with interest at the rate of not less than three and one-half per cent per annum, payable with the policy or withdrawable in cash on demand by the holder, or (*d*) applied to purchase non-forfeitable participating paid-up additions. If no election is in effect on any anniversary, the distribution for that anniversary shall be held on deposit as provided in option (*c*).

Loans.—At any time while the policy is in force, the Company will loan, upon proper assignment, and upon the sole security of this policy, a sum not exceeding the cash surrender value of the policy and outstanding additions, at the end of the then current policy year, less any outstanding indebtedness and interest on the total amount loaned to the next policy anniversary. Interest on the loan will be at the rate of six per cent per annum, payable annually on each anniversary of the policy. If the policy is payable to a revocable beneficiary, loans will be made upon the sole signature of the Insured. At its option, the Company may defer the granting of any loan, other than to pay premiums on policies in this Company, for not exceeding ninety days after the application therefor is made. Any interest in default will be added to the principal of the loan.

Repayment of Loans.—The whole or any part of a loan may be repaid at any time. Failure to repay the loan or to pay interest thereon, shall not avoid the policy while the indebtedness is less than the cash surrender value, nor until thirty-one days after notice has been mailed to the last known address of the Insured and any assignee.

Assignments.—No assignment hereof shall be binding on the Company until filed at its Home Office. The Company assumes no responsibility as to the validity of any assignment.

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[fol. 54]

CASH SURRENDER VALUE.—After this policy has been in force for one year, it will have a cash surrender value, payable upon surrender of the policy with the written assent of the person to whom it is made payable. The Company may defer the payment of any cash value for not exceeding ninety days from the date of the application therefor.

PAID-UP INSURANCE.—This policy upon payment of the premium stated herein becomes paid-up for its face amount.

NON-FORFEITURE PROVISIONS

The cash surrender value will be the reserve on the policy and any outstanding additions, at the nearest even dollar per thousand dollars of insurance, less any indebtedness to the Company hereon.

The legal reserve under this policy is computed by the net level premium method upon the American Experience Table of Mortality, with interest at three and one-half per cent per annum.

Values not stated in the table herein will be furnished on request.

Table of Loan or Cash Values

The values as herein stated are for each $1,000 of insurance, and will be increased by outstanding additions and will be decreased by any indebtedness hereon.

After Policy Has Been in Force	Loan or Cash Surrender Value at End of Policy Year	After Policy Has Been in Force	Loan or Cash Surrender Value at End of Policy Year
1 Yr.	$831		
2 Yrs.	840		

Age 77 Life Single Premium.

OPTIONAL METHODS OF SETTLEMENT

The Insured, subject to the rights of any assignee or of any beneficiary whose interest is irrevocable, may elect by written notice to the Company at its Home Office, to have the net sum due under this policy if not less than $1,000 paid in accordance with the terms of any one of the following options; or, in the absence of election by the Insured, the beneficiary may elect similar options when the proceeds of the policy become payable to such beneficiary.

Option 1—Proceeds left on Deposit. The net sum payable may be left on deposit with the Company, and the Company will pay interest thereon at not less than three and one-half per cent per annum. Payment of the sum left on deposit will be made under such conditions as may be agreed upon when the option is elected.

Option 2—Limited Income. Equal payments for a stipulated number of years as set forth in the following table:

Equal Payments for each $1,000 of the net sum payable

Number of Years	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Annual Payment		$503.69	$344.56	$263.04	$213.09	$181.22	$158.01	$140.55	$127.09	$116.19	$107.24	$99.98	$93.78	$88.47	$83.99
Monthly Payment	$84.65	43.05	29.19	22.37	18.11	15.35	13.38	11.90	10.75	9.83	9.09	8.46	7.94	7.49	7.10
Number of Years	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Annual Payment	$79.89	$76.37	$73.26	$70.47	$67.98	$65.74	$63.70	$61.85	$60.17	$58.63	$57.20	$55.89	$54.69	$53.57	$52.53
Monthly Payment	6.76	6.46	6.20	5.97	5.75	5.56	5.39	5.24	5.09	4.96	4.84	4.73	4.63	4.53	4.45

Option 3—Life Income. Equal payments for a stipulated number of years and thereafter as long as the payee shall live, the amount of such payments to be based upon the age at nearest birthday of the payee at the date of maturity of the policy.

TABLE FOR MALE LIVES

Equal Payments for 20 years and thereafter as long as payee shall live, for each $1,000 of the net sum payable

Age	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Annual Payment	$41.26	$41.47	$41.70	$41.98	$42.17	$42.49	$42.85	$43.20	$43.17	$43.44	$43.73	$44.09	$44.33	$44.65	$44.98	$45.38	$45.68	$46.05	$46.48	$46.93	$47.34	$47.80
Monthly Payment	3.69	3.82	3.84	3.86	3.88	3.89	3.92	3.94	3.97	3.99	3.73	3.74	3.77	3.79	3.82	3.85	3.88	3.88	3.92	3.96	4.02	4.05
Age	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53
Annual Payment	$48.10	$48.55	$49.02	$49.50	$50.00	$50.51	$51.03	$51.57	$52.12	$52.69	$53.27	$53.86	$54.46	$55.07	$55.69	$56.33	$56.95	$57.55	$58.20	$58.83	$59.49	$60.11
Monthly Payment	4.09	4.13	4.17	4.21	4.25	4.29	4.34	4.39	4.44	4.49	4.53	4.59	4.64	4.69	4.74	4.79	4.85	4.90	4.96	5.01	5.06	5.12
Age	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75

Annual Surplus Distribution.—At the end of each policy year while this policy is in force, there shall be distributed hereon such share of the divisible surplus as may be apportioned hereto by the Company.

Distribution Options.—Such surplus distributions may at the election of the holder be—(*a*) taken in cash, (*b*) left on deposit with the Company to accumulate at interest, (*c*) applied to the purchase of paid-up additions to this policy, or (*d*) applied to the shortening of the endowment period.

Cash Surrender Value.—After this policy has been in force for one year, it will have a cash surrender value, payable upon surrender of the policy with the written assent of the person to whom it is made payable. The Company may defer the payment of any cash value for not exceeding ninety days from the date of the application therefor.

Paid-up Insurance.—This policy upon payment of the premium stated herein becomes paid-up for its face amount.

ing the cash surrender value of the policy and outstanding additions, at the end of the then current policy year, less any outstanding indebtedness and interest on the total amount loaned to the next policy anniversary. Interest on the loan will be at the rate of six per cent per annum, payable annually on each anniversary of the policy. If the policy is

NON-FORFEITURE PROVISIONS

The cash surrender value will be the reserve on the policy and any outstanding additions, at the nearest even dollar per thousand dollars of insurance, less any indebtedness to the Company hereon.

The legal reserve under this policy is computed by the net level premium method upon the American Experience Table of Mortality, with interest at three and one-half per cent per annum.

Values not stated in the table herein will be furnished on request.

notice has been mailed to the last known address of the Insured and any assignee.

Assignments.—No assignment hereof shall be binding on the Company until filed at its Home Office. The Company assumes no responsibility as to the validity of any assignment.

Table of Loan or Cash Values

The values as herein stated are for each $1,000 of insurance, and will be increased by outstanding additions and will be decreased by any indebtedness hereon.

After Policy Has Been in Force For	Loan or Cash Surrender Value at End of Policy Year	After Policy Has Been in Force For	Loan or Cash Surrender Value at End of Policy Year
1 Yr.	$831		
2 Yrs.	840		

Age 77 Life Single Premium.

[fol. 54]

OPTIONAL METHODS OF SETTLEMENT

The Insured, subject to the rights of any assignee or of any beneficiary whose interest is irrevocable, may elect by written notice to the Company at its Home Office, to have the net sum due under this policy if not less than $1,000 paid in accordance with the terms of any one of the following options; or, in the absence of election by the Insured, the beneficiary may elect similar options when the proceeds of the policy become payable to such beneficiary.

Option 1—Proceeds left on Deposit. The net sum payable may be left on deposit with the Company, and the Company will pay interest thereon at not less than three and one-half per cent per annum. Payment of the sum left on deposit will be made under such conditions as may be agreed upon when the option is elected.

Option 2—Limited Income. Equal payments for a stipulated number of years as set forth in the following table:

Equal Payments for each $1,000 of the net sum payable

Number of Years	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Annual Payment		$503.69	$344.86	$263.04	$213.99	$181.22	$158.01	$140.85	$127.69	$116.18	$107.24	$99.50	$93.78	$88.67	$83.89
Monthly Payment	$84.05	43.65	29.19	22.27	18.11	15.35	13.38	11.93	10.75	9.83	9.09	8.45	7.94	7.49	7.10
Number of Years	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Annual Payment	$79.89	$76.37	$73.25	$70.47	$67.99	$65.76	$63.78	$61.98	$60.37	$58.92	$57.59	$56.39	$55.29	$54.29	$53.37
Monthly Payment	6.76	6.46	6.20	5.97	5.75	5.56	5.39	5.24	5.09	4.98	4.86	4.76	4.67	4.58	4.50

Option 3—Life Income. Equal payments for a stipulated number of years and thereafter as long as the payee shall live, the amount of such payments to be based upon the age at nearest birthday of the payee at the date of maturity of the policy.

TABLE FOR MALE LIVES

Equal Payments for 20 years and thereafter as long as payee shall live, for each $1,000 of the net sum payable

Age	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Annual Payment	$41.26	$41.47	$41.70	$41.93	$42.17	$42.40	$42.65	$42.90	$43.17	$43.44	$43.73	$44.03	$44.33	$44.65	$44.98	$45.32	$45.68	$46.05	$46.43	$46.83	$47.9	$47.65
Monthly Payment	3.59	3.58	3.64	3.66	3.68	3.69	3.72	3.74	3.67	3.69	3.72	3.74	3.77	3.79	3.82	3.85	3.88	3.91	3.94	3.96	4.0.	4.05
Age	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53
Annual Payment	$48.10	$48.55	$49.02	$49.50	$50.00	$50.51	$51.03	$51.57	$52.12	$52.69	$53.27	$53.86	$54.46	$55.07	$55.69	$56.32	$56.96	$57.62	$58.29	$58.98	$59.69	$60.11
Monthly Payment	4.09	4.13	4.17	4.21	4.25	4.29	4.34	4.39	4.44	4.49	4.53	4.58	4.64	4.69	4.74	4.79	4.85	4.90	4.96	5.01	5.08	5.12
Age	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
Annual Payment	$60.73	$61.34	$61.98	$62.80	$63.65	$64.53	$64.95	$64.35	$64.90	$65.49	$66.13	$66.13	$66.63	$66.70	$66.94	$67.14	$67.32	$67.47	$67.59	$67.69	$67.77	$67.83
Monthly Payment	5.17	5.20	5.27	5.31	5.36	5.40	5.45	5.46	5.32	5.35	5.36	5.61	5.64	5.65	5.68	5.69	5.70	5.72	5.73	5.73	5.74	5.76

TABLE FOR FEMALE LIVES

Equal Payments for 20 years and thereafter as long as payee shall live, for each $1,000 of the net sum payable

Age	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Annual Payment	$40.89	$40.67	$40.86	$41.04	$41.26	$41.47	$41.70	$41.93	$42.17	$42.40	$42.65	$42.90	$43.17	$43.44	$43.73	$44.03	$44.33	$44.65	$44.98	$45.32	$45.68	$46.05
Monthly Payment	3.44	3.45	3.47	3.48	3.50	3.52	3.54	3.56	3.58	3.60	3.62	3.64	3.67	3.69	3.72	3.74	3.77	3.79	3.82	3.85	3.88	3.91
Age	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53
Annual Payment	$46.43	$46.83	$47.26	$47.66	$48.10	$48.56	$49.05	$49.56	$50.09	$50.64	$51.22	$51.82	$52.45	$53.10	$53.77	$54.46	$55.17	$55.89	$56.64	$57.41	$58.20	$58.96
Monthly Payment	3.95	3.98	4.02	4.05	4.09	4.13	4.17	4.21	4.26	4.30	4.35	4.40	4.45	4.50	4.56	4.61	4.67	4.72	4.78	4.84	4.89	4.94
Age	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75
Annual Payment	$59.72	$60.50	$60.40	$60.11	$60.75	$61.24	$61.50	$62.20	$62.66	$62.96	$64.00	$64.44	$64.90	$65.40	$65.78	$66.12	$66.43	$66.70	$66.94	$67.14	$67.32	$67.47
Monthly Payment	4.98	5.01	5.06	5.12	5.17	5.20	5.27	5.21	5.26	5.40	5.46	5.46	5.50	5.56	5.58	5.61	5.64	5.66	5.68	5.69	5.70	5.72

These optional methods of settlement shall not be applicable to a policy payable to a corporation, partnership, or association, or to an assignee.

The method of settlement elected by the Insured shall not be varied by the payee, but if such method of settlement has been chosen by the beneficiary, such beneficiary shall have the right to change or the right to commute any stipulated payments remaining unpaid under Option 2 or 3 upon the basis of interest at three and one-half per cent per annum.

The first payment under Option 2 or 3 will be made immediately. Any stipulated payments remaining unpaid under Option 2 or 3 at the death of the payee last entitled to receive such payments shall be commuted and paid in one sum to the executors or administrators of said payee last entitled to payments.

On funds left on deposit under Option 1, or funds held for payment of stipulated payments under Option 2 or 3, there shall be paid such share of interest earned in excess of three and one-half per cent per annum as the Company may from year to year determine.

Option 4—Settlement by Mutual Agreement. Provision may be made for payment of the net sum due under this policy in any other manner that may be mutually agreed upon in writing by the Insured and the Company.

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The Insured by an amendment dated October 16, 1934

declares that the answers to questions numbered 22 [fol. 55]

on part ..... of the application for this policy should read

Isabella H. Miller, Robert B. Haines, Jr.

Margaret W. Haines and Charles H. Haines,

children

John Hancock Mutual Life Insurance Company

Dated at Boston, Mass. Nov. 22 1934 Elmer A. Simmons

Secretary

The ~~insured~~ under this Policy under which children, Isabella H. Miller, Margaret W. Haines, Robert B. Haines, Jr., and Charles H. Haines, are named as beneficiaries, nominates the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or the Successor Trustee under a Deed of Trust dated May 6, 1934, in which the insured reserves to herself the right to exercise all rights and powers granted under the said policy without notice to or consent by the Trustee, and without liability on the part of the John Hancock Mutual Life Insurance Company to see the application of the proceeds of the policy, to be the contingent beneficiary under this Policy, to receive payment in the manner and upon the contingencies provided in an instrument dated November 17, 1934, as set forth in a rider attached hereto as of even date, the original of said instrument being filed at the Home Office of the Company. The Insured expressly reserves to herself the privilege of changing the contingent beneficiary from time to time.

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

By Elmer A. Simmons Secretary.

Dated at Boston, November 22, 1934.

SEE SUBSEQUENT ENDORSEMENT

Insured died May 7, 1946. Amount payable Fifty Thousand Nine Dollars and no/100 Cents ($50,009.00). Share of Isabella H. Miller, daughter, $12,502.25; share of Margaret W. Haines, daughter, $12,502.25; share of Robert B. Haines, Jr., son, $12,502.25; share of Charles H. Haines, son, $12,502.25; payable in accordance with previous election of Settlement Option, dated April 3, 1945, copy attached hereto.

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

By Elmer A. Simmons Secretary.

Dated at Boston, Sept. 3, 1946.

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JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

OF BOSTON, MASSACHUSETTS

NOMINATION OF BENEFICIARY AND ELECTION OF SETTLEMENT OPTION.

Mary H. Haines, the insured under Policy 2544451, issued by the JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, of Boston, Massachusetts, under which her children, Isabella H. Miller, Margaret W. Haines, Robert B. Haines, Jr., and Charles H. Haines, are named as beneficiaries, nominates the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or its Successor Trustee under a Deed of Trust dated May 8, 1934, in which she reserves to herself the right to exercise all rights and powers granted under the said policy without notice to or consent by the Trustee, and without liability on the part of the John Hancock Mutual Life Insurance Company to see to the application of the proceeds of the policy, to be the contingent beneficiary under said policy, to receive payment in the manner and upon the contingencies hereinafter provided, hereby expressly reserving to herself the privilege of changing the contingent beneficiary from time to time, subject to the provisions of the policy and subject also to any pledge or assignment thereof.

The insured directs that the amount due under said policy at her death be paid for the equal benefit of her said children, each such child's share, if not less than One Thousand Dollars ($1000), to be paid in accordance with Option One (1) of the settlement options of said policy and the provisions of said policy relating thereto by combined principal and interest payments, and at her death Twelve Dollars ($12) per each One Thousand Dollars ($1000) of each such child's share, shall be paid in one sum to such child, and a like amount shall be paid to such child quarterly thereafter, until his or her share in the amount due, together with the interest thereon, shall be exhausted; any balance remaining on deposit of either such child's share shall be paid to such child as a final instalment. If, however, any such child's share in the amount due is less than One Thousand Dollars ($1000) at the death of the insured, such share shall be paid to such child in one sum.

In the event of the death of any of the insured's said children prior to the death of the insured, or in the event of the death of any of the insured's said children after becoming entitled to payment and before payment in full of his or her share as hereinbefore provided, the share of such deceased child in the amount due, provided there shall be surviving children of such deceased child, shall be paid in one sum to the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or its Successor Trustee under said Deed of Trust, but if there shall be no surviving children of such deceased child, such share shall be divided into equal shares of such a number that one share may be and shall be added to the share of each surviving child of the insured, and paid in the manner provided for payment of such surviving child's share, and so that one share may be and shall be paid in one sum to the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or its Successor Trustee under said Deed of Trust, for the benefit of the surviving children of each deceased child of the insured.

If at the death of the last survivor of the insured and her said children before payment in full, there shall be no surviving children of any of the insured's said children, the amount due shall be paid in one sum to the executors or administrators of the last survivor of the insured and her said children.

No person entitled to any benefit hereunder shall have (without the written consent of the insured filed with the Company during her lifetime) the right to demand or receive in lieu of the benefits as herein provided, the commuted value thereof, nor to borrow from the Company on the security thereof, nor in any wise to anticipate, alienate or assign the benefits payable hereunder or any part of them, and no such benefit shall in any way be subject to the interference or control of the creditors of the person entitled thereto.

It is understood and agreed that wherever in this election and nomination, payments are contingent upon the prior death of any beneficiary or beneficiaries, the remaining beneficiary or beneficiaries shall furnish to said Company due proof of said death or deaths, and that until such proof has been furnished, the Company shall be free and relieved from liability as to any payment it may make in regular course without knowledge of such death.

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

OF BOSTON, MASSACHUSETTS

This mode of settlement shall cancel and supersede any election of settlement option heretofore made under said policy, and shall not be varied by any beneficiary or beneficiaries.

It is hereby agreed that settlement under said policy shall be made in accordance wit the foregoing election, subject to the conditions of the policy.

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

By Chas A Dimon Secretary

Dated at Boston, Mass. November 22, 1934

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JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

OF BOSTON, MASSACHUSETTS

ELECTION OF SETTLEMENT OPTION

Mary E. Haines, the insured under Policy No. 2544451, issued by the JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, of Boston, Massachusetts, under which her children, Isabella H. Miller, Margaret W. Haines, Robert B. Haines, Jr. and Charles H. Haines, and the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or its Successor Trustee under a Deed of Trust dated May 8, 1934, are named as beneficiaries, hereby directs that the amount payable under said policy at her death be paid for the equal benefit of her said children, each such child's share to be paid in accordance with Option One (1) of the settlement options of said policy and the provisions of said policy relating thereto by combined principal and interest payments, and at her death Twelve Dollars ($12) per each One Thousand Dollars ($1000) of each such child's share, shall be paid in one sum to such child, and a like amount shall be paid to such child quarterly thereafter, until his or her share in the amount payable, together with the interest thereon, shall be exhausted; any balance remaining on deposit of any such child's share, less than the stipulated amount to be paid quarterly, shall be paid to such child as a final instalment.

In the event of the death of any of the insured's said children prior to the death of the insured, or in the event of the death of any of the insured's said children after becoming entitled to payment and before payment in full of his or her share as hereinbefore provided, the share of such deceased child in the amount payable, provided there shall be surviving children of such deceased child, shall be paid in one sum to the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or its Successor Trustee under said Deed of Trust, but if there shall be no surviving children of such deceased child, such share shall be divided into equal shares of such a number so that one share may be and shall be added to the share of each surviving child of the insured, and paid in the manner provided for payment of such surviving child's share, and so that one share may be and shall be paid in one sum to the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or its Successor Trustee under said Deed of Trust, for the benefit of the surviving children of each deceased child of the insured.

If at the death of the last survivor of the insured and her said children before payment in full, there shall be no surviving children of any of the insured's said children, the amount payable shall be paid in one sum to the executors or administrators of the last survivor of the insured's said children.

It is hereby agreed, if permitted by law, that no person entitled to the principal of the proceeds of this policy, or interest due or to become due thereon, or to any instalment thereof shall be permitted to commute, anticipate, encumber, alienate, or assign the said principal, interest, or any such instalment, or any part thereof, and that no payment of said principal, or of any interest thereon, or any instalment, or any part thereof shall be in any way subject to such person's debts, contracts, or engagements, or to attachment or levy under any judicial processes for payment thereof. The Company assumes no responsibility for the validity of the agreement made in this paragraph.

The Company shall not be required at any time to place under an Option for any payee an amount less than One Thousand Dollars ($1000), and the payment by the Company of such an amount in one sum to the payee then entitled to payments thereunder shall discharge the Company from all liability therefor.

It is understood and agreed that if any payments under this election of settlement option are contingent upon the prior death of any person named herein as beneficiary, the surviving beneficiary entitled to receive such payments shall furnish due written proof of such death to said Company at its Home Office in Boston, in a form satisfactory to it and particularly identifying the policy herein specified, and that said Company shall not in any case be liable for any payment it may make in regular course prior to its receipt, as aforesaid, of such proof.

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JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

OF BOSTON, MASSACHUSETTS

This election of settlement option shall cancel and supersede any election of settlement option heretofore made under said policy, and shall not be varied by any beneficiary.

It is expressly understood and agreed that said Company shall not be bound hereby unless and until this instrument, duly executed, shall have been received by said Company at its Home Office in Boston, Massachusetts.

The insured's children, Isabella H. Miller, Margaret W. Haines, Robert B. Haines, Jr. and Charles H. Haines, and the Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania, Trustee or its Successor Trustee under said Deed of Trust, hereby join in this instrument in token of their assent thereto.

Dated at Philadelphia, Pa. this 3rd day of April A.D.1945

Witness: /s/ Walter Willard

By /s/ Isabella H. Miller
Isabella H. Miller

Witness: /s/ E. Maude Stewart

By /s/ Margaret W. Haines
Margaret W. Haines

Witness: /s/ E. Maude Stewart

By /s/ Robert B. Haines, 3rd.
Robert B. Haines, Jr.

Witness: /s/ Gilbert M. Harris

By /s/ Charles H. Haines
Charles H. Haines.
Fidelity-Philadelphia Trust Company,
Trustee

Witness: /s/ J. L. Weatherby

By /s/ Carl Royer

The foregoing election recorded this 15th day of May A.D.1945

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

By Elmer L. French Secretary.

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Application for Insurance to the John Hancock Mutual Life Insurance Company of Boston, Massachusetts.

Ed. 1-34 — STATEMENTS TO BE MADE BY APPLICANT — 2544451 — FORM 1101-O-34

1. Full name of applicant. (Print) MARY H HAINES

2. Address for premium notices. (Print) Number 125 Street Linwick Lane City or Town Phila State Pa
Residence 125 Linwick Lane, Phila Pa

3. Place of birth. City or Town Centerville State or Country. Texas

4. What is your present occupation? State exact duties. housekeeper

5. Name and address of employer.

12. Form of policy applied for. Single Premium Life

13. Amount. $ 50,000

14. Date of birth. Month March Day 19 Year 1858 Age next birthday 77

15. Do you desire Total and Permanent Disability Benefit providing for Waiver of Premium? no

16. Do you desire Double Indemnity Benefit? no

17. Premiums to be paid ~~Annually~~ ~~Semi-Annually~~ ~~Quarterly~~ Single — Total Amount of Premium $ 43,491.00

18. Have you paid (Yes or No) the premium? no — Amount paid $ none

19. Dividends to be applied under Option A
(State whether (A) in cash, (B) to reduce current premium, (C) left to accumulate or (D) to purchase additional insurance.) NOTE. (Option D not applicable to Term Policies.)

20. State whether Married, Single, Widow, Widower. widow

21. Non-forfeiture Provisions to become effective in event of non-payment of premiums. (Strike out provision not desired.) ~~Extended Term Insurance~~ ~~Reduced Paid-Up Insurance~~

6. (a) Have you ever taken a flight in any type of aircraft either as pilot or passenger? (a) no
(b) Do you contemplate taking aerial flights either as pilot or passenger? (b) no
(If either answer is yes, give full particulars on aviation questionnaire.)

7. Do you intend to reside or travel outside the United States or Canada? If so, state for how long, when, where, and for what purpose. no

8. Have you ever applied for a policy which has not been issued or upon which an additional premium charge has been imposed by modification of form or otherwise? no

9. Is any application for insurance now pending or contemplated in any Company? Name of Co. Amount Plan no

10. Is this insurance intended to replace other insurance now in force in this or any other Company? (If so, name Company and give full particulars.) no

11. Insurance in force on my life

Name of Company.	Amount	Plan	Year Issued
Mutual Life	$50,000	Single Prem. Life and Endt	1924

22. Name of beneficiary. (Print) Isabella H. Miller, Robert B. Haines, Jr., Margaret W. Haines & Charles H. Haines, children of the insured under Mode of Settlement hereto attached

23. Relationship to applicant. Age

24. Do you reserve the right to change the beneficiary from time to time? yes

Unless otherwise provided, any policy issued hereunder shall be payable to the executors administrators of the insured, if no named beneficiary is living at insured's death; if an Endowment it shall be payable to the insured at its maturity as an Endowment; if payable to a trustee, the Company shall not be liable for the application of the policy proceeds under the trust.

25. State the total monthly income payable in event of total Disability under policies on your life, including Health Insurance.
$ ..... monthly income.

Corrections and Amendments (For Home Office use only)

26. Are you now in good health, so far as you know or believe? yes

27. Have you any deformity, impairment of sight or hearing, or loss of limb? no

28. Have you within six months lived with or been intimately associated with any person suffering from consumption? no

29. Have you ever applied for or are you now receiving any invalid pension, Government disability or vocational training? no

30. (a) Have albumin, blood or sugar ever been found in your urine? no
(b) Have you ever been told that you had symptoms of Bright's disease or diabetes? no

31. (a) To what extent do you use spirituous or malt liquors? none
(b) Have you ever used either of them to excess? no

32. Have you ever received or applied for treatment at any hospital, dispensary, sanitarium, cure or other institution? Many years ago non-malignant tumor and for adhesions

33. Have you ever been away on account of your health? Give full particulars. no

34. Have you ever had or been treated for any of the following? Answer yes or no to each. If yes give full particulars in space below.

Epilepsy no	Nervous breakdown no	Chronic cough no	Indigestion no	Colic no	Goitre no
Paralysis no	Discharge from the ear no	Blood Spitting no	Appendicitis no	Kidney disease no	Syphilis no
Frequent or severe headaches no	Rheumatism no	Consumption no	Ulcer of stomach or duodenum no	Disease of bladder or prostate no	Any heart trouble no
	Cancer or tumor no	Pleurisy no		High blood pressure no	Any surgical operation no

Details of illnesses recorded above.

35. Have you within the past five years had medical advice for any disease or disorder not included above? Give full particulars. no.

36. Exact height 5 ft. 4 in. (In shoes)
Accurate weight 152 lbs. (Ordinary clothes)
When were you last weighed? Weekly
Have you gained or lost weight in the past two years? If so state cause, how much and how long weight has remained stationary. no

37. FAMILY RECORD

	Age if living	Condition of Health	Age at death	Disease which caused death
Father			all yr	Kidney trouble
Mother			68	Apoplexy
How many BROTHERS?	-		-	
How many SISTERS?				

IT IS UNDERSTOOD AND AGREED: **A.** That the foregoing statements and answers which I have made in this application as a basis for the contract of insurance, are complete, true and correctly recorded. **B.** That if payment of the premium has been made with the application, the insurance (subject to the terms and conditions of any policy issued hereunder) if the application is approved at the Home Office of the Company, shall be in force from the date of the completion of the application, provided, that the Company shall be satisfied that on said date I was insurable in accordance with its rules for the amount and on the plan applied for without modification; that if payment of the premium has not been made with the application, any policy which may be issued hereon shall take effect only if I have had no medical treatment since the date of the application, and then only in the event that it shall be delivered to and actually received by me, and the first premium or instalment thereof actually paid while I am alive and in sound health, and that whether the premium is paid with the application or otherwise, delivery and payment shall constitute an acceptance of the policy and of all its conditions. **C.** That a receipt on the form attached hereto is the only receipt the agent is authorized to give for any payment made before delivery of the policy; that only the President, a Vice President, the Secretary or an Assistant Secretary can make, modify or discharge contracts or waive any of the Company's rights or requirements; that notice to or knowledge of the soliciting agent or the medical examiner is not notice to or knowledge of the Company and that neither of them is authorized to accept risks or to pass upon insurability. **D.** That if errors or omissions are discovered by the Company in the application, the Company is authorized to amend the application by noting the change in the space above entitled "Corrections and Amendments" and I hereby agree that my acceptance of any contract issued on the application so amended shall constitute a ratification by me of such changes or amendments, but no change shall be made as to amount, classification, plan of insurance, or benefits, unless agreed to in writing by me. **E.** I expressly waive on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder all provisions of law forbidding any physician or other person who has heretofore attended or examined me or who may hereafter attend or examine me from disclosing any knowledge or information which he thereby acquired. **F.** That if within sixty days from the date of this application the Company has given no notice of the acceptance of the risk it shall be considered as declined.

Written at Philadelphia, Pa Jan 15 1934

Witness: Ed Duffield — Mary H. Haines — Applicant

NOTICE TO AGENT. The receipt below is not to be detached unless the initial premium is collected when application is completed. If question 18 is answered "no" and receipt is detached from application action will be withheld until receipt is accounted for.

FORM 1101-O-34

[Fol 60]

60

COPY

This Form must Not be used as an application for Reinstatement

AMENDMENT TO APPLICATION

with Health Certificate

FORM 1748

Ed. 7-20 50M 1-34

[fol. 61]

John Hancock Mutual Life Insurance Company

of Boston, Massachusetts

Mary H. Haines of Philadelphia, Penna.

made application on October 5, 19 34 for Policy No. 2544451

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, do hereby refer to the said application which with the statements and agreements therein contained, together with the following statements and agreements made in amendment, modification or support of those heretofore made I agree shall be taken as a whole and as such shall form the basis for the contract of insurance.

I hereby certify that answer to Question 22 of said application should read:

Isabella H. Miller, Robert B. Haines, Jr., Margaret W. Haines & Charles H. Haines, children."

~~I certify that I am now in good health; that all the answers and declarations made by me in said application still remain true, except as noted below; and that since the date of said application, I have had no injury, ailment, illness or disease, nor symptoms of such, neither have I consulted a physician, except as noted below.~~

61

present occupation is .....
(State exact nature of duties)

at Philadelphia, Pa. this 16th day of October A. D., 19 34

ess Mr Duffield ✓ Mary H. Haines Applicant

61

112 E.
Life Annuity.
November, 1923.

Philadelphia

NON-PARTICIPATING

LIFE ANNUITY.

Annuity No. 30599

The Mutual Life Insurance Company of New York.

Annuity on the Life of

DRAW CHECK TO PAY THIS PREMIUM TO THE ORDER OF THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

Mary H. Haines

Annuity, $ 5026.60

Payable quarter-annually ($1256.65)

First Payment, July 27th 1934

Date, April 27th 1934

Single Payment to the Company, $ 40642.

1000-7-33

62

EXHIBIT D

LIFE ANNUITY. SINGLE PAYMENT.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

(First Policy issued February 1st, 1843)

The printed provision as to the reserve held for this Contract was deleted before the issuance of this Contract and the following substituted therefor:
"The reserve held for this Contract shall be computed in accordance with the Combined Annuity Table assuming interest at the rate of four per centum per annum."
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
By [signature] Secretary

81-600

In Consideration of the payment to the Company of

ANNUITY NUMBER 30599

Forty thousand six hundred forty-two Dollars,

Promises to pay at the Home Office of the Company in the City of New York

ANNUITY OF $ 5026.60

to Mary H. Daines

of Philadelphia, County of Philadelphia, State of Pennsylvania,

AGE 76

during the lifetime of said Mary H. Daines

of Philadelphia, County of Philadelphia, State of Pennsylvania,

SINGLE PAYMENT TO COMPANY $ 40642.

the Annuitant, an Annuity of Five thousand twenty-six and 60/100 Dollars per annum,

payable in quarter- annual payments of Twelve hundred fifty-six and 65/100 Dollars each,

the first such payment to be made on the Twenty-seventh day of July

One Thousand Nine Hundred and thirty-four if the Annuitant be then living, and subsequent

payments to be made on the Twenty-seventh day of October, January, April and July

thereafter, said Annuity terminating with the last quarter- annual payment preceding the death of the Annuitant.

It is Agreed that the Company shall be furnished with evidence that the Annuitant is living on each and every day on which an annuity payment falls due, and that no such payment shall be made until such evidence has been received, and that upon the death of the Annuitant there shall be no proportionate payment of this Annuity to the day of such death.

This Annuity is granted upon the declaration that said Annuitant was aged seventy-six years at the last anniversary of her birth, having been born on the Nineteenth day of March One Thousand eight hundred fifty-eight

If such declaration shall be found untrue then the amount of annuity payable under this Contract shall be such as the payment made to the Company herefor would have purchased at the Annuitant's correct age; any overpayment or overpayments by the Company, with interest thereon at the rate of five per centum per annum, compounded annually, shall be deducted from the current or next succeeding annuity payment or payments to be made after correction of age.

This Annuity Contract constitutes the entire contract between the parties hereto.

~~The reserve held for this Contract shall be computed in accordance with McClintock's Tables of Mortality among Annuitants assuming interest at the rate of four per centum per annum.~~

This Contract does not participate in the surplus of the Company.

No agent or other person except the President, Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company has power on behalf of the Company to make, modify or discharge this or any contract.

In Witness Whereof, the Company has caused this Contract to be executed this Twenty-seventh day of April 1934.

David F. Houston. President

[signature] Secretary.

Countersigned [signature] Registrar.

When the payment on this contract is made to The Mutual Life Insurance Company of New York, it will be acknowledged either by a receipt signed by the Treasurer and countersigned by the Agency Cashier, or by endorsement on the contract by the Company at its Home Office. Possession of this contract is not otherwise evidence that such payment has been made.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
By [signature] Secretary

23-3

ANNUITY DURING LIFETIME OF ANNUITANT — NON-PARTICIPATING — SINGLE PAYMENT

63

[fol. 63]

[fol. 64] IN UNITED STATES DISTRICT COURT

EXHIBIT E TO STIPULATION OF FACTS

112 E.

Life Annuity.

November, 1923.

Philadelphia

NON-PARTICIPATING

LIFE ANNUITY.

Annuity No. 31,908

The Mutual Life Insurance Company of New York.

Annuity on the Life of

DRAW CHECK TO PAY THIS PREMIUM TO THE ORDER OF THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

Mary H. Haines

Annuity, $ 2440.64

Payable quarterly ($610.16)

First Payment, Regular March 9th 19 35

Date, October 10th 19 34

Single Payment to the Company, $ 19358.

300-7-34

64

EXHIBIT E

LIFE ANNUITY. SINGLE PAYMENT.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

(First Policy issued February 1st, 1843)

The printed provision as to the reserve held for this Contract was deleted before the issuance of this Contract and the following substituted therefor:
"The reserve held for this Contract shall be computed in accordance with the Combined Annuity Tables assuming interest at the rate of four per centum per annum."

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

[illegible] Secretary

21-400

In Consideration of the payment to the Company of

ANNUITY NUMBER

31,908

NINETEEN THOUSAND THREE HUNDRED FIFTY EIGHT Dollars,

Promises to pay at the Home Office of the Company in the City of New York

ANNUITY OF

to Mary H. Haines

$ 2440.64 of Philadelphia, County of Philadelphia, State of Pennsylvania,

AGE

during the lifetime of said Mary H. Haines

76 of Philadelphia, County of Philadelphia, State of Pennsylvania,

a special annuity payment of $397.95 on the 9th day December 1934, if the Annuitant be then living and the Annuitant, an Annuity of Twenty-four hundred forty and 64/100 Dollars per annum,

SINGLE PAYMENT TO COMPANY

payable in quarter annual payments of Six hundred ten and 16/100 Dollars each,

$ 19358

the first such payment to be made on the ninth day of March

One Thousand Nine Hundred and thirty-five if the Annuitant be then living, and subsequent

payments to be made on the ninth day of June, September, December, and March

thereafter, said Annuity terminating with the last quarter annual payment preceding the death of the Annuitant.

[fol. 65]

It is Agreed that the Company shall be furnished with evidence that the Annuitant is living on each and every day on which an annuity payment falls due, and that no such payment shall be made until such evidence has been received, and that upon the death of the Annuitant there shall be no proportionate payment of this Annuity to the day of such death.

This Annuity is granted upon the declaration that said Annuitant was aged seventy-six years at the last anniversary of her birth, having been born on the nineteenth day of March One Thousand eight hundred fifty-eight If such declaration shall be found untrue then the amount of annuity payable under this Contract shall be such as the payment made to the Company herefor would have purchased at the Annuitant's correct age; any overpayment or overpayments by the Company, with interest thereon at the rate of five per centum per annum, compounded annually, shall be deducted from the current or next succeeding annuity payment or payments to be made after correction of age.

This Annuity Contract constitutes the entire contract between the parties hereto.

~~The reserve held for this Contract shall be computed in accordance with McClintock's Tables of Mortality among Annuitants assuming interest at the rate of four per centum per annum.~~

This Contract does not participate in the surplus of the Company.

No agent or other person except the President, Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company has power on behalf of the Company to make, modify or discharge this or any contract.

When the payment on this contract is made to The Mutual Life Insurance Company of New York, it will be acknowledged either by a receipt signed by the Treasurer and countersigned by the Agency Cashier, or by endorsement on the contract by the Company at its Home Office. Possession of this contract is not otherwise evidence that such payment has been made.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

[illegible] Secretary

In Witness Whereof, the Company has caused this Contract to be executed this tenth day of October 1934.

David F. Houston President.

Secretary.

Countersigned [illegible] Registrar.

ANNUITY DURING LIFETIME — NON-PARTICIPATING — SINGLE PAYMENT

69

A-[illegible] 3-26-34

6976

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

RECEIVED $ 19358.00 FROM THE OWNER OF

ANNUITY NO. 31.908

IN PAYMENT OF THE SINGLE PREMIUM DUE Oct. 10 1934

COUNTERSIGNED OCT 10 1934 19___

AT [illegible]

[signature]
AGENCY CASHIER

[signature]
Treasurer

NOTE: "This receipt is not binding upon the Company until countersigned by the Company's Agency Cashier through whom the amount is collected, nor until the premium has actually been paid in cash."

66

John Hancock
MUTUAL
LIFE INSURANCE COMPANY
OF BOSTON, MASSACHUSETTS

The annuitant is hereby notified that by virtue of this contract he is a member of the John Hancock Mutual Life Insurance Company, and is entitled to vote at all meetings of the company, personally or by proxy. The annual meeting is held at its Home Office on the second Monday in each year, at twelve o'clock noon.

SINGLE PREMIUM LIFE ANNUITY

Nonparticipating

Number 026406

Annuitant

MARY F. HAINES

Annuity Payments

$323.89

Payable QUARTERLY

Commencing NOVEMBER 15, 1934
Date of Contract

OCTOBER 15, 1934

Single Premium $10509.00

Age 76 6-12

I. J. SANTAMARIE

INSURANCE COUNSELLOR

123 S. BROAD ST., PHILA.

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(Page 17)

[fol. 67] IN UNITED STATES DISTRICT COURT
EXHIBIT F TO STIPULATION OF FACTS

EXHIBIT F

[fol. 68]

ANNUITY

NUMBER 02 496

AGE 76 6-12

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

OF BOSTON, MASSACHUSETTS

In Consideration of the Representations in the Application herefor, a copy of which is attached hereto and made a part hereof, and of the payment of a Single Premium of

TEN THOUSAND FIVE HUNDRED NINE AND 00/100 Dollars, the

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

hereby promises to pay, at its Home Office in Boston, to

MARY H. HAINES

an Annuity during the continuance of the life of the said

MARY H. HAINES

(hereinafter called the Annuitant), said Annuity to be paid in equal QUARTERLY payments of THREE HUNDRED TWENTY-THREE AND 89-100 Dollars each, commencing on the FIFTEENTH day of NOVEMBER, 1934, and terminating at the death of the Annuitant.

This Contract does not participate in the surplus of the Company.

The Provisions hereinafter set forth are hereby made a part of this Contract.

In Witness Whereof, the John Hancock Mutual Life Insurance Company has, by its President and Secretary, executed and delivered this Contract and caused the same to be duly countersigned, at Boston, Massachusetts,

on this FIFTEENTH day of OCTOBER, A.D. 1934

Charles A. Diman
Secretary.

Walter I. Crocker
President.

Countersigned,

D. J. Keaver
Policy Registrar.

Form 1126-O-26 500 12-33

SINGLE-PREMIUM LIFE ANNUITY NON-PARTICIPATING

[fol. 69]

Payment of Premiums. The premium hereunder is payable in advance at the Home Office of the Company or to a duly authorized agent presenting the official receipt signed by the President or Secretary and countersigned by the agent designated on such receipt.

Evidence that Annuitant Is Living. The Company will require evidence that the Annuitant is alive before making Annuity payments hereunder.

Incontestability. This Contract shall be incontestable after one year from its date of issue: but in case the age has been misstated, the amount of Annuity payable hereunder shall be that which the premium paid would have purchased at the correct age. Any overpayment or overpayments by the Company, with interest at the rate of six per centum per annum thereon, shall be charged against the payments to be made after adjustment.

No suit shall be maintained under this Contract unless commenced within six years from the time when the cause of action accrues.

Assignments. No assignment hereof shall be binding on the Company until filed at its Home Office. The Company assumes no responsibility as to the validity of any assignment.

Entire Contract. This Annuity Contract and the application herefor constitute the entire contract between the parties.

Modifications. No agent or other person except the President, a Vice-President, the Secretary or an Assistant Secretary, has power to change or modify this Contract.

69

APPLICATION to the ~~JOHN~~ HANCOCK MUTUAL LIFE INSURANCE COMPANY of Boston, Massachusetts

for a **LIFE ANNUITY** on the life of MARY H. HAINES (Print Full Name) 0204067 | Sex Female

1. Residence (Print) 156 School Lane (Number) (Street) Philadelphia (City or Town) Pennsylvania (State)

2. Place of Birth Coatesville, (City or Town) Pennsylvania (State or Country) 3. Date of Birth March 19, 1858. Age Last Birthday 76

5. Source of information as to date of birth.
Mutual Life of New York Policies #'s 1021323 and 1025294
(Obtain a certified copy of Certificate of Birth, if possible; otherwise, a certified copy of the best available record; if no record, an affidavit of a qualified person.)

6. Present Occupation with length of time thus engaged.
at home

7. State whether Single, Married or Widowed.
widow

8. State full name of person to whom annuity payments are to be made if other than to the Annuitant named above.

if living, otherwise to the Annuitant.

9. Address to which payments are to be sent. (Print)
156 School Lane, (Number) Philadelphia, (Street) Pa.
(City or Town) (State)

10. Form of Annuity Contract desired: (Insert X in space provided for form selected.)
A [X] —Providing for termination with the death of the Annuitant without refund.
B [ ] —Providing that, if at the Annuitant's death the sum of the annuity payments made is less than the premium paid for the annuity, a final payment of the amount of such premium in excess of the sum of the annuity payments shall be made by the Company.

If form B is applied for, state Beneficiary to whom final payment, if any, is to be made.

Name None Relationship

Is the right reserved to change the Beneficiary from time to time?

11. First quarterly payment due at the end of first annuity period.
(Insert Ann., Semi-ann., Quar., or Mo.)

12. Any special request.
Please make first Payment in 30 days & quarterly thereafter.

13. (a) Single Premium $10509.00
or
(b) Amount of each Annuity Payment desired $
(Answer either (a) or (b).)

Corrections and Amendments.

14. Has Premium been paid? No

If so, state amount $

It is understood and agreed that the foregoing statements and answers which I have made in this application as a basis for the Annuity contract are complete, true and correctly recorded; that if errors or omissions are discovered by the Company in this application, the Company is authorized to amend this application by noting the change in the space entitled "Corrections and Amendments" and I hereby agree that my acceptance of any contract issued on this application so amended shall constitute a ratification by me of such changes or amendments, but no change shall be made as to amount, classification, plan of contract, or benefits, unless agreed to in writing by me.

WRITTEN AT Philadelphia, Pa. C.A.Duffield (Witness) Mary H. Haines (Annuitant)

DATE October 5th, 1934 C.A.Duffield (Witness) Mary H. Haines (Applicant (If other than Annuitant))

CREDIT FOR WRITING THIS APPLICATION BELONGS TO

Agency or District at	General Agent or District Manager	Asst. Dist. Manager	Agent
C.A.Duffield, Phila. Ordinary			C.A.Duffield

(Print Names)

Life Ann. Form 1136-O-34 Ed. 1-1934

If the premium is not paid when the application is signed collection must be made upon issuance of the contract.

[fol. 71] IN UNITED STATES DISTRICT COURT
EXHIBIT G TO STIPULATION OF FACTS

This Agreement,

Made the eighth day of May A. D., 1934

BETWEEN

MARY H. HAINES

(hereinafter called Settlor)

and

Fidelity-Philadelphia Trust Company, of Philadelphia, Pennsylvania,

or its successors, as Trustee (hereinafter called Trustee),

WITNESSETH,

FIRST: That Settlor, desiring to establish a trust covering the proceeds of certain insurance policies described in Schedule "A" hereto attached and made part hereof, and the proceeds of any additional policies hereafter made subject to the terms hereof, agrees that all such policies of insurance shall be made payable to Trustee as beneficiary or as assignee, and to effect this Settlor agrees to execute assignments, changes of beneficiary or such other instruments as may be necessary.

SECOND: That the proceeds of the policies listed herein and of any additional policies made subject to this agreement shall, when collected by Trustee, be held upon the following terms of trust:

To pay the net income therefrom equally and in convenient instalments unto Isabelle H. Miller, Robert B. Haines, 3rd, Charles H. Haines and Margaret W. Haines, children of Settlor, for and during the full terms of their respective lives.

Upon the death of each of the said children of Settlor, whether such death shall occur before or after the death of Settlor, to pay the net income at any time fixed for the distribution thereof, from the portion of principal represented by the child of Settlor so dying (or which would have been represented by the child of Settlor so dying had such child been living at the time fixed for the said distribution) equally unto the children of the child of Settlor so dying, to wit, the grandchildren of Settlor, as hereinafter set forth, and if such child of Settlor so dying shall leave no children him or her surviving, then to hold the said portion of principal for the other children and children of deceased children of Settlor equally, per stirpes, upon the same terms of trust as herein set forth for their respective shares.

As to grandchildren of Settlor born after the death of Settlor

who are the children of a deceased child of Settlor, as aforesaid, to pay their shares of the net income from the share of principal represented by their deceased parent unto such grandchildren until twenty-one years after the death of the survivor of Settlor and his said children, namely: Isabelle H. Miller, Robert B. Haines, 3rd, Charles H. Haines and Margaret W. Haines, at which time to transfer, assign and pay over to such grandchildren the portion of principal respectively represented by them hereunder absolutely.

As to grandchildren of Settlor living at the death of Settlor, who are the children of a deceased child of Settlor, as aforesaid, to pay their shares of the net income from the share of principal represented by their deceased parent equally unto such grandchildren for and during the full terms of their respective lives.

Provided, however, that at any time after any grandchild receiving income has attained the age of twenty-five years, Trustee may, upon the request of such grandchild, transfer, assign and pay over unto such grandchild all or any part of the portion of principal represented by such grandchild if Trustee, in its discretion, shall deem it to the best interest of such grandchild so to do.

If any grandchild of Settlor, born either before or after the death of Settlor, shall die without having received the portion of the principal hereof from which such grandchild was in receipt of income in his or her lifetime, then upon the death of such grandchild to transfer, assign and pay over the said portion of principal unto such person or persons as such grandchild so dying may by his or her last Will and Testament direct, limit and appoint. In default of appointment to hold the said portion of principal equally for the brothers and sisters and children of deceased brothers and sisters of the grandchild of Settlor so dying upon the same terms of trust with the same remainders over as herein set forth for the portion of the principal respectively represented hereunder by such brothers and sisters, and in default of such brothers and sisters and children of deceased brothers and sisters to hold the said portion of principal for the other children and grandchildren of Settlor upon the same terms of

SCHEDULE "A"

MARY H. HAINES

Policy No.	Company	Amount
4,842,239	Mutual Life Insurance Co. of New York	$200,000.
Note:	Is held by insurance company and to be paid into this Trust upon the death of the four principal beneficiaries.	
* 1,021,323	Mutual Life Insurance Col of New York	25,000.
		$225,000.
4885836	Mutual Life Insurance Co.	$100,000
2544451	" " " "	50,000

NOTE: These two above policies were purchased following the purchase of number 2842239, itemized above, and are held by the insured, being made subject to the same terms and conditions, in connection with this Trust Agreement.

* Policy 1,021,323 Mutual Life Ins Co - 25,000 was removed from this trust by notarized change of beneficiary form executed by Mary H. Haines on June 30th 1938

H Headley
6/30/1938

[fol. 75]

(b) To obtain and receive from the respective insurance companies advances or loans available under any policy held hereunder.

(c) To accept, collect and receive in cash, or otherwise dispose of all distributive shares of surplus or dividends which may be allotted and set apart to any policy held hereunder.

If the insured changes the beneficiary under any policy, or for any reason surrenders the insurance, such act shall have the effect of revoking this trust with respect to the policy so changed or surrendered.

TWELFTH: Settlor hereby relieves the Life Insurance Companies issuing the policies held hereunder from any responsibility to see to the execution or the performance of the trust created hereby.

THIRTEENTH: Settlor reserves the right to add to this trust any policies of insurance issued on his life, the proceeds thereof to be held on the same terms of trust and with like force and effect as if the said policies had originally constituted a part of the said trust.

FOURTEENTH: If an actuarial calculation is involved in the administration of any trust created hereby, Trustee is authorized to employ at any time and from time to time any recognized actuary to calculate (on a basis of consumption of principal and income; interest at 4½%; payments at the beginning of each year; age seventeen as the beginning of college years and/or such other factors as to Trustee shall seem proper) the sum or sums to be set aside by Trustee in order to comply with the provisions hereof; the cost thereof to be charged proportionately against the principal of the trust funds established hereunder. If a recalculation shall at any time disclose that an amount set aside is either excessive or insufficient for the purpose designated, then Trustee may distribute such excess amount among, or collect (and add to the said fund so set aside) the amount of any deficiency from, the principal of the other trust funds established hereunder in such proportions as may seem proper. Trustee shall not be responsible or liable for any variation by reason of depreciation in value of securities set aside or fluctuation in interest rates, and its discretionary power shall be absolute in the administration of this provision.

FIFTEENTH: In case of controversy or litigation over the collection of the proceeds of policies held hereunder Trustee is authorized to adjust, compromise or otherwise settle any contest concerning said policies or the collection thereof.

Trustee is hereby exonerated and released, except at its own option, from any duty or responsibility of entering into or maintaining litigation or instituting proceedings to enforce payment of the proceeds of any of the policies which may constitute a part of the trust created by this deed, until Trustee shall have been fully indemnified to its entire satisfaction against all expenses and liabilities to which, in the judgment of Trustee, it may be subjected by reason of such action.

SIXTEENTH: This Trust has been accepted in the State of Pennsylvania and shall in all respects be governed by the laws of that State.

SEVENTEENTH: Settlor shall have the right at any time, and from time to time, by an instrument or instruments executed under his hand and intended to take effect in his lifetime, to amend, revoke or change all or any of the trusts herein declared, and to make such new uses and trusts as to him shall seem fit; provided, however, that the duties, powers and liabilities of Trustee shall not be changed without its written consent.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

SEALED AND DELIVERED
IN THE PRESENCE OF

Mary H. Haines [SEAL]

FIDELITY-PHILADELPHIA TRUST COMPANY

By J. E. Dunn
Vice-President

ATTEST: [illegible]
Assistant Secretary

On the 8th day of May A. D., One Thousand Nine Hundred and thirty-four (1934) before me

A NOTARY PUBLIC FOR THE COMMONWEALTH OF PENNSYLVANIA RESIDING IN THE CITY OF PHILADELPHIA

personally appeared Mary H. Haines, and in due form of law acknowledged the foregoing Indenture to be her act and deed and desired the same might be recorded as such.

Witness my hand and notarial seal.

I AM NOT A STOCKHOLDER, DIRECTOR OR OFFICER OF SAID TRUST COMPANY

NOTARY PUBLIC
My Commission Expires March 6, 1935

75

THIRD: Trustee is hereby authorized to pay at any time, and from time to time, any portion or portions the principal of the funds he' ' In Trust hereunder unto or for the account of any beneficiary, or any descendant of Settlor, either for comfortable maintenance and support, for educational requirements, illness, operations, or for any reason whatsoever which shall to Trustee, in its discretion, seem sufficient. Any payments so made shall, so far as is practicable in the discretion of Trustee, be charged without interest against the share of principal represented by the individual benefited thereby, either at the time of such payment or at the time of any subsequent division or distribution of the said fund.

FOURTH: If at any distribution of the principal or income of the trust fund any of the beneficiaries entitled thereto shall be minors, Trustee may retain such shares during the minority of the respective beneficiaries, and may invest any moneys so held in accordance with the provisions of this agreement governing investments by Trustee; or such shares may be applied, in the absolute discretion of Trustee, to the maintenance, education and support of such minors, either by the payment of bills therefor or by the payment thereof unto their respective Guardians or unto such person or persons as Trustee may select; the receipt of such payee to be a full and complete discharge to Trustee.

FIFTH: If, in the opinion of Trustee, any beneficiary hereunder shall at any time, for any reason whatsoever, be incapable of properly using the income to which he or she may be entitled, Trustee may, during the period of such incapacity, apply the said income for the proper maintenance and support of such beneficiary, either by the payment of bills therefor or by the payment thereof to such person or persons or institution as to Trustee shall seem best; the receipt of such payee to be a full and complete discharge to Trustee.

SIXTH: The principal of the trust and the income therefrom, shall be free from the debts, liabilities and engagements of those beneficially interested therein, and shall not be subject to assignment by them nor to attachment, execution or sequestration under any legal, equitable or other process for the enforcement of judgments or claims of any sort against them, either individually or collectively.

SEVENTH: If at any time in the administration of any trust created hereby a division or distribution of principal is involved, and any question shall arise as to the time of such distribution, the basis on which the valuation of the shares to be distributed or set aside shall be determined, the securities and/or cash to be allocated to such shares, or any other matter in connection with such division or distribution of principal, the decision of Trustee shall be final and conclusive.

EIGHTH: Trustee may without liability, invest, reinvest and keep invested the principal of the trust in such stocks, bonds, securities, investments or other evidences of indebtedness as to Trustee may seem prudent, without being confined to such as are usually termed "legal investments"; with full power and authority to purchase investments as aforesaid at a premium and, in its discretion, to deduct all or any part of such premium from income.

Trustee may purchase from the estate of Settlor, or from any account of Settlor, loan or otherwise, any investments or property held therein at such price as to Trustee, in its absolute discretion, may seem proper and may hold the same as investments hereunder; or Trustee may lend to the Executor of the Will or Administrator of the estate of Settlor such sums of money as Trustee may think proper, taking as collateral security therefor any of the investments then constituting part of Settlor's estate; or taking, without collateral, the note of the said Executor or Administrator.

Trustee may exercise any rights to subscribe for stocks or bonds or other allotments received by reason of investments held in the trust, or may sell such rights for such price as to it may seem best.

Trustee may in connection with reorganization, merger or foreclosure proceedings, or under any other circumstances which seem to warrant it, deposit, surrender or exchange any stocks, bonds or other evidences of indebtedness belonging to the trust and pay any amounts assessed thereon, and Trustee may deposit any of them under a Voting Trust Agreement.

Trustee is authorized and empowered to sell any and all property constituting the trust at either public or private sale, at such time or times, for such price or prices, upon such terms as to cash and credit as it may think best.

NINTH: Trustee assumes no liability for the payment of premiums or other charges which may at any time become due upon the policies included under this agreement, it being expressly agreed that such premiums or other charges shall be paid by Settlor.

TENTH: If any policy included under this agreement shall mature and be payable before the death of Settlor, he shall be permitted to collect and receive the proceeds of such policy, free and clear of any and all trusts.

ELEVENTH: All benefits, privileges and options, available to the insured under the policy contracts prior to decease, except as herein otherwise provided, shall be for the sole benefit of the insured and shall not be subject to this trust, Settlor hereby expressly reserving unto himself by his own act alone, without the consent or approval or joinder of Trustee or any beneficiary of this trust (but not in limitation of any other option or privileges he may have) full power:

(a) To change the beneficiary of or assign any policy held hereunder.

[fol. 73]

trust with the same remainders over as herein set forth for the portion of the principal respectively represented hereunder by them.

If at any time fixed for the distribution of any portion of the principal hereof there shall be living no one qualified to take hereunder, then to transfer, assign and pay over the said principal then distributable unto such person or persons as would be entitled thereto and in the same proportions as provided by the laws of the State of Pennsylvania had Settlor died at the time fixed for the said distribution a resident of that State intestate, possessed thereof in fee and absolutely.

Trustee is hereby authorized at any time either to hold the principal hereof undivided or, in its absolute discretion, to segregate the trusts for the children and grandchildren of Settlor, and to allocate to the several trusts such bonds, stocks, or other investments or property as to Trustee, in its absolute discretion, shall seem proper.

Immediately upon the death of Settlor, ROBERT B. HAINES, 3rd, son of Settlor, shall be associated with FIDELITY-PHILADELPHIA TRUST COMPANY as Co-Trustee hereunder, with the same powers, discretions and duties as the said corporate Trustee. In the event of the death, resignation or inability to act of the said Robert B. Haines, 3rd, CHARLES H. HAINES, son of Settlor, shall succeed him as Co-Trustee hereunder.

IN UNITED STATES DISTRICT COURT

EXHIBIT H TO STIPULATION OF FACTS

WHEREAS by Agreement dated May 8, 1934 between MARY H. HAINES, Settlor, and FIDELITY-PHILADELPHIA TRUST COMPANY, Trustee, said Settlor retained the right to alter, revoke or change all or any of the trusts declared in the said agreement.

NOW, THEREFORE, pursuant to the right so retained Settlor hereby alters, revokes and changes the said agreement as follows:

(a) Settlor hereby revokes the Tenth Clause of the said agreement in its entirety and in lieu thereof substitutes the following clause:

"TENTH: If any policy included under this agreement shall mature and be payable before the death of Settlor, the proceeds of such policy shall be paid over to Trustee to be held upon the terms of trust set forth in the said agreement."

(b) Settlor hereby revokes the Eleventh Clause of the said agreement and in lieu thereof substitutes the following clause:

"ELEVENTH: Trustee is hereby, for the purposes of

(b) Settlor hereby revokes the Eleventh Clause of the said agreement and in lieu thereof substitutes the following clause:

"ELEVENTH: Trustee is hereby, for the purposes of the trusts herein created, vested with all right, title and interest in and to the policies, and is authorized and empowered to exercise and enjoy, for the purposes of the trusts herein created, all the options, benefits, rights and privileges under the policies and any additional policies made subject to this agreement, and the insurance companies issuing the policies are hereby authorized and directed to recognize Trustee as fully entitled to all options, rights, privileges and interests under the policies, and any receipts, releases and other instruments executed by Trustee in connection with the policies shall be binding and conclusive upon the insurance companies and any and all of them and upon all persons and corporations interested in the trusts herein created and/or the policies.

Any and all dividends due from time to time upon any and all policies held hereunder shall be paid to Trustee and the receipt of Trustee for such dividends shall be a full and complete discharge therefor to the insurance companies issuing the policies upon which the respective dividends are so paid. Any and all dividends so received by Trustee shall be applied by Trustee to the payment of premiums due upon policies held hereunder. With this exception, however, Trustee assumes no liability for the payment of premiums or other charges which may at any time become due upon the policies held under this agreement. Should Settlor fail to pay the said premiums Trustee, in its discretion, may borrow on the policies upon which such unpaid premiums are due and payable an amount sufficient to pay such premiums then due and payable, and use the amount so bor-

rowed to pay such unpaid premiums, or Trustee, in its discretion, may surrender the policies upon which unpaid premiums are due and payable and hold the cash surrender value thereof upon the same terms of trust as are herein set forth as to the proceeds of the policies payable hereunder at the death of Settlor and as though Settlor had died on the date upon which such cash surrender value is received by Trustee. In no event shall Trustee be obligated to enforce the covenant of Settlor to pay the said premiums unless Trustee, in its discretion, shall deem it advisable to do so and unless Trustee is also first indemnified to its entire satisfaction against all costs and charges to which, in its opinion, it may be subjected by reason of such action."

(c) Settlor hereby revokes the Seventeenth Clause of the said agreement and hereby substitutes therefor the following clause:

"SEVENTEENTH: It is hereby declared by Settlor that she has been fully advised as to the legal effect of the execution of this Agreement and informed as to the character and amount of the property hereby transferred and conveyed; and further that she has given consideration to the question whether the settlement herein contained shall be revocable or irrevocable and she hereby declares the same (as altered by this instrument) to be irrevocable and that it shall stand without power in Settlor at any time to revoke, change or annul any of the provisions herein contained."

ment herein contained shall be revocable or irrevocable and she hereby declares the same (as altered by this instrument) to be irrevocable and that it shall stand without power in Settlor at any time to revoke, change or annul any of the provisions herein contained."

IN WITNESS WHEREOF the said Settlor has hereunto set her hand and seal and the said Trustee has caused its corporate seal to be affixed, duly attested, this 6th day of July A.D. 1938.

Sealed and Delivered in the presence of:

J. C. Weatherly

Mary H. Haines (SEAL)

FIDELITY-PHILADELPHIA TRUST COMPANY

By Ira Penney

Vice President

ATTEST: Thomas Stewart

Assistant Trust Officer

On the 6th day of July A.D. 1938 before me, a Notary Public in and for the State of Pennsylvania residing in Philadelphia, personally appeared Mary H. Haines, who in due form of law acknowledged the foregoing Supplemental Agreement to be her act and deed and desired the same might be recorded as such.

Witness my hand and notarial seal.

John D. Johnson

NOTARY PUBLIC

[fol. 79] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 14406

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, Executors of the Will of Mary H. Haines, Plaintiffs,

v.

FRANCIS R. SMITH, Collector of Internal Revenue, Defendant.

EXCERPTS FROM SUPPLEMENTAL STIPULATION OF FACTS —Filed June 25, 1956

[fol. 80] (4) The original of the agreement entered into on July 6, 1938 by the decedent and Fidelity-Philadelphia Trust Company of Philadelphia as Trustee (amending the aforesaid agreement of May 8, 1934), a copy of which is attached to the original Stipulation of Facts as Exhibit H, was delivered to the said Trustee on or about July 8, 1938.

* * * * * * *

[fol. 82] (13) On or about April 3, 1944, The Mutual Life Insurance Company of New York received a copy of the aforesaid agreement dated July 6, 1938, by and between the decedent and Fidelity-Philadelphia Trust Company of Philadelphia, as Trustee, and with respect thereto The Mutual Life Insurance Company of New York received an affidavit from the decedent dated May 26, 1944, a copy of which is attached hereto as Exhibit I and hereby made a part hereof.

[fol. 83] (20) On May 31, 1944, the John Hancock Mutual Life Insurance Company received a letter, dated May 29, 1944, from the Fidelity-Philadelphia Trust Company, as Trustee aforesaid, a copy of which is attached hereto as Exhibit J and hereby made a part hereof, in which said [fol. 84] letter there was enclosed a copy of the aforesaid

agreement dated July 6, 1938, by and between the decedent and Fidelity-Philadelphia Trust Company, as Trustee. The said John Hancock Mutual Life Insurance Company acknowledged receipt of the said letter in a letter dated June 8, 1944, a copy of which is attached hereto as Exhibit K and hereby made a part hereof. The reference in said latter letter to policy 254451 was intended to refer to the aforesaid life insurance policy No. 2544451 issued by John Hancock Mutual Life Insurance Company to the decedent.

* * * * * * *

[fol. 86] (27) At the time the decedent purchased the aforesaid life insurance policies and the aforesaid annuity contracts the agent made no attempt to sell her the annuities separate from the insurance.

(28) By use of the term "insurance" to describe the aforesaid policies the defendant is not stipulating that these policies are true insurance.

[fol. 87] Exhibit I to Supplemental Stipulation of Facts

State of Pennaylvania)
County of Philadelphia)
City of Philadelphia)

Mary H. Haines, being duly affirmed, deposes and says:

I live at 156 School Lane, Philadelphia, Pa.

At the time I executed an instrument dated July 6th, 1938, amending the Trust Agreement between me and Fidelity-Philadelphia Trust Company, dated May 8th, 1934, I was misinformed as to rights in insurance policies on my life, Numbers 1025294, 4885836, and 4842239, issued by Mutual Life Insurance Company of New York, and was misinformed to the effect that I had some rights in these policies. I subsequently realized that I had, many years before, divested myself of all rights in those policies, and had transferred those rights to my children, and that, therefore, insofar as said agreement of amendment pur-

ported to affect the rights granted by the policies or allowed by the insurance company that agreement was and is of no effect whatsoever.

This affidavit is made to permit the Mutual Life Insurance Company of New York to allow the beneficiaries mentioned in the policies, in whom all rights in the policies are vested, to deal with the policies and change the terms thereof as they please.

/s/ Mary H. Haines

Mary H. Haines

Subscribed and affirmed
to before me this 26 day
of May, 1944.

/s/ Nellie Groves
Notary Public

(seal) Nellie Groves (Notary Public)
My Commission Expires April 14, 1947

[fol. 88] Exhibit J to Supplemental Stipulation of Facts

Fidelity-Philadelphia Trust Company
Philadelphia, Pennsylvania

May 29, 1944

John Hancock Mutual Life Insurance Company
Home Office
Boston, Mass.

Gentlemen:

Re: Policy No. 254,451
Mary H. Haines

The above policy in your company in the face amount of $50,000. was taken out in October, 1934. In the application for this policy, the right to change the beneficiaries was not reserved to the insured.

In a rider attached to the policy titled, "Nomination of Beneficiary and Election of Settlement Option" dated

November 22, 1934, this Company as trustee of a Trust Agreement dated May 8, 1934, of which Mary H. Haines was the Settlor, was named as contingent beneficiary from time to time.

On July 6, 1938, Mary H. Haines, the insured, executed an amendment to the aforementioned Trust Agreement of May 8, 1934 making the Trust irrevocable and assigning to us as Trustee all her rights under the policy.

It has been brought to our attention that this amendment was never filed with your company. We enclose a copy of it.

From this, you will see that Mrs. Haines, the insured, has completely divested herself of all her right, title and interest in this policy, and has vested in this Company, as trustee, all rights which she formerly possessed.

It would therefore appear that, as, according to the original terms of the policy and application, all rights were vested jointly in the insured and the beneficiaries, these rights are now vested jointly in this Company as trustee and the beneficiaries.

We would appreciate your acknowledgment of this document as you will, in the near future, receive a request for a change in the option under which the settlement will be made.

We assume that any such request should be signed by the four children of the insured and also by this Company instead of the insured due to the powers granted to this Company by the insured in this Supplement dated July 6, 1938. Is this correct?

Appreciating your early reply.

Yours truly,

/s/ J. L. Weatherly

J. L. Weatherly
Assistant Secretary

[fol. 89] EXHIBIT K TO SUPPLEMENTAL STIPULATION OF FACTS

June 8, 1944

Fidelity-Philadelphia Trust Company
Philadelphia
Pennsylvania

Attention: J. L. Weatherly, Assistant Secretary

Dear Sir:

We have your letter of May 29th under cover of which you enclosed copy of amendment to the Trust Agreement dated May 8, 1934 between Mary H. Haines and your institution.

We are filing the copy of the amendment as evidence that the insured has vested all her right, title and interest in Policy 254451 on the life of Mary H. Haines, in the Fidelity-Philadelphia Trust Company and any change in beneficial interest should be signed by the four children of the insured and also by the Fidelity-Philadelphia Trust Company as Trustee.

Yours truly,

Dana J. Kidder,
Assistant Secretary.

By .....

[fol. 90] IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,067

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, Executors of the Will of Mary H. Haines, Deceased,

v.

FRANCIS R. SMITH, Collector of Internal Revenue, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued January 24, 1957

Before BIGGS, *Chief Judge,* and MCLAUGHLIN and HASTIE, *Circuit Judges.*

OPINION OF THE COURT—February 28, 1957

By MCLAUGHLIN, *Circuit Judge.*

The question here is whether a death payment under a contract with a life insurance company is includible in the gross estate of the decedent under Section 811(c)(1)(B) [fol. 91] of the Internal Revenue Code of 1939, as amended, 26 U.S.C. 1952 ed. Sec. 811.[1]

[1] Internal Revenue Code of 1939:

"Sec. 81. Gross Estate.

"The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

• • •

"(c) [As amended by Sec. 7(a), Act of October 25, 1949, c. 720, 63 Stat. 891] Transfers in Contemplation of, or Taking Effect at, Death.—

"(1) General rule.—To the extent of any interest therein of which the decedent has at any time made a transfer (except

In 1934, decedent, aged seventy-six, purchased three single premium insurance policies on her life. As a condition for the issuance of each policy the insurors required decedent to purchase an annuity in such amount that the sum of the premiums for death payment and annuity would equal approximately 11/10ths of the face amount of the death payment. In the policies decedent's four children were named primary beneficiaries and the Fidelity-Philadelphia Trust Co. (as trustee under a trust agreement) contingent beneficiary of the share of any of the decedent's children who predeceased her. In 1935, decedent reported on a gift tax return the interests transferred and paid the gift taxes thereon. By July 6, 1938, decedent had assigned irrevocably and unalterably to the beneficiaries all her rights in all death payments.[2] Until the date of death, decedent retained the annuity interests.

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in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

* * *

"(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom; or * * *"

[2] As to the assignments of the three policies the findings are as follows:

"21. Pursuant to decedent's written application for the policies, each of the two life policies issued by The Mutual Life Insurance Company of New York contained at and after issue the following provision:

"RIGHTS: Anything in this policy to the contrary notwithstanding, prior to the maturity of this policy, the Insured's children Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines jointly, the survivors or survivor, if none of said children be living, then the living children of said children of the Insured, jointly or the survivors or survivor, if none of the children of said children of the Insured be living, then to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured, some of the beneficiaries may, without the consent and to the exclusion

[fol. 92] Decedent died May 7, 1946. In the estate tax return filed August 6, 1947, the death payments under the above contracts were not included in the gross estate. The Commissioner, under Sec. 811(c)(1)(B), assessed and collected a deficiency resulting from an audit which included those payments. After a claim for refund was disallowed, this suit was brought in the district court. The estate prevailed below and the government appealed.

Helvering v. LeGierse, 312 U.S. 531 (1941) removed the "life insurance" label from transactions such as these and directed that they be treated as investments. Goldstone v.

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of the Insured or any other beneficiary, receive, exercise, and enjoy every benefit, option, right and privilege conferred by this policy or allowed by the Company.

"22. The decedent's four children were named as beneficiaries of the life insurance policy issued by John Hancock Mutual Life Insurance Company in which no right to change beneficiaries was reserved to the decedent. The policy, as issued, provided for the payment of the proceeds to the decedent's executors or administrators if her four children predeceased her. The decedent assigned this life policy to Fidelity-Philadelphia Trust Company, trustee, under a trust agreement between her and that company, and then nominated that company as trustee to be contingent beneficiary of this life policy, and on November 22, 1934 the policy was amended so to provide.

"23. Under the trust agreement decedent had reserved to herself all benefits, privileges and options available to her under the life insurance policy issued by John Hancock Mutual Life Insurance Company including rights of dividend receipt, assignment and surrender and had also reserved the right to change, amend or revoke the trust agreement. On July 6, 1938 the decedent amended the trust agreement by assigning, irrevocably to the trustee for trust purposes all her right, title and interest in this and any other policy subject to the trust agreement and by irrevocably empowering the trustee to exercise and enjoy all options, benefits, rights and privileges under this and any other policy subject to the trust agreement. By the same amendment the decedent further provided that the trust agreement as so amended was thereafter unalterable and irrevocable. Neither decedent nor her estate had any beneficial or reversionary interest in the trust she created nor any reversionary interest in the life insurance policy issued by John Hancock Mutual Life Insurance Company after July 6, 1938."

United States, 325 U.S. 687 (1945), held the death payment in this type of transaction includible in the gross estate. Since then in United States v. Tonkin, 150 F.2d 531 (3 Cir. 1945), cert. den. 326 U.S. 771, we held a similar death pay-
[fol. 93] ment includible. The present situation is allegedly beyond the reach of those authorities as a result of the assignment of all the decedent's rights except the annuity to the trustee. That precise issue has been decided for the government in Reynolds v. Commissioner, 45 B.T.A. 44 (1941); Burr v. Commissioner, 156 F.2d 871 (2 Cir. 1946), cert. den. 329 U.S. 785; Conway v. Glenn, 193 F.2d 965 (6 Cir. 1952). The Court of Appeals for the Seventh Circuit did reach the opposite result in Bohnen v. Harrison, 199 F.2d 492 (7 Cir. 1952), Judge Duffy dissenting, affirmed by an equally divided court, 345 U.S. 946, rehearing denied 345 U.S. 978. However, in a later opinion, Greene v. United States, 237 F.2d 848 (7 Cir. 1956), that court, construing the same section, 811(c)(1)(B), squarely conceded that "The decisive issue is whether, looking to substance and not merely to form, the decedent had retained for her life the right to the income from the property transferred."

The district court in following the Bohnen case misconstrues the Goldstone opinion. In the latter the court included the death payment in the gross estate on the ground that the decedent retained a contingent reversionary interest under Helvering v. Hallock, 309 U.S. 106 (1940), and found it unnecessary to reach the question whether the retention of the life annuity interest involved required its inclusion. There is nothing in Goldstone to support taxpayers' position.

It is urged that the annuity interests are completely separate and independent of the death payments and therefore cannot be encompassed by the following language of Sec. 811(c)(1)(B)—" * * * retained for his life * * * the right to income from the property * * * ". To demonstrate this independence taxpayers point to the fact that the annuity interests could be purchased by any one the age of the decedent for the same premium independent of the death payment. The illustration fails completely to show the independence of the death payment from the income payments for admittedly the death payment could not be

[fol. 94] bought without the income payments and it is the death payment which is sought to be included in the estate.

The argument itself exalts form over substance in an arrangement where the Supreme Court has specifically directed that the form be ignored. Helvering v. LeGierse, supra. The substance of the matter is that a capital fund—the premium—was deposited with the insurance company for a guaranteed annual return and repayment of the residue to beneficiaries on the death of the depositor. But for the insurance company's guarantee of the payments, it is identical to a transfer in trust with the settlor taking back a beneficial life interest. The assignments of all rights to the beneficiaries do not change the result. In the first place it does not appear that the beneficiaries received anything substantial since they were all contingent beneficiaries and survivorship was unknowable until the death of the decedent. While, theoretically, there may have been a possibility of anticipating the death payment by a cash surrender, the anticipators could do nothing with the cash until the survivorship status was determined. A bare possibility of cash surrender does not change the inherently testamentary nature of this procedure. If a surrender is effected, a different problem is presented. Cf. Hutchinson v. Commissioner, 20 T.C. 749 (1953). Here the plain purpose was to convey the capital sum to the natural objects of the decedent's bounty in testamentary style and retain a life interest in the transferor. The small matter of the cash surrender right is well disposed of in Bank of New York v. Kelly, 135 N.J. Eq. 418 (1944) as follows:

> "In view of the conservative reason for the investment, it seems fantastic to suppose that a cancellation of the policy by Mrs. Parish during the lifetime of the insured at its surrender value was regarded by either as probable. If the decedent had intended to make a complete, absolute, and immediately effective gift, why would he resolve to invest a material portion of his [fol. 95] estate in such manner that an enjoyment of it by the donee before his death would necessitate the loss incident to the surrender of the policy. Guggenheim v. Rasquin, 312 U.S. 254, 257. Cash or securities

could well have been deposited in the trust instead of a single premium life insurance policy payable upon the event of death and having a surrender value based on a mortality table."

The district court was greatly impressed with the conclusion that the decedent had no ownership rights in the death payment after the assignments. In a sense, a life tenant has no ownership right in the remainder. But possession of legal title to the life policy after the assignment is not controlling. All of Section 811(c) is plainly directed at inter vivos transfers where title is no longer in the decedent at death. Taxation is a practical matter and the shifting of the economic benefits of the investment occasioned by the death of the decedent is too much akin to a testamentary disposition not to be subjected to the same tax under Sec. 811(c)(1)(B). See Helvering v. Bullard, 303 U.S. 297 (1938).

The judgment of the district court will be reversed and the case remanded with the direction that judgment be entered in favor of the defendant (appellant in this court).

[fol. 96] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,067

FIDELITY-PHILADELPHIA TRUST COMPANY and ROBERT B. HAINES, 3d, Executors of the Will of Mary H. Haines, Deceased,

v.

FRANCIS R. SMITH, Collector of Internal Revenue, Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: BIGGS, *Chief Judge,* and MCLAUGHLIN and HASTIE, *Citcuit Judges.*

JUDGMENT—February 28, 1957

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the case remanded with direction that judgment be entered in favor of the defendant-appellant.

February 28, 1957

[fol. 97] Petition for rehearing covering 11 pages filed March 11, 1957 omitted from this print.

It was denied and nothing more by order March 15, 1957.

[fol. 98] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—March 15, 1957

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

By the Court

McLAUGHLIN
Circuit Judge

Dated: March 15, 1957

[fol. 101] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing)

[fol. 102] SUPREME COURT OF THE UNITED STATES

No. 1008, October Term, 1956

[Title omitted]

ORDER ALLOWING CERTIORARI—June 17, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office - Supreme Court, U.S.
FILED
MAY 17 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1956.

No. ~~1956~~ 130

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, Executors of the Will of Mary H. Haines, Deceased,

Petitioners,

against

FRANCIS R. SMITH, Collector of Internal Revenue,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

ROBERT T. MCCRACKEN,
JOHN B. LEAKE,
1421 Chestnut Street,
Philadelphia 2, Penna.,
Counsel for Petitioners.

May 13, 1957.

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IN THE

Supreme Court of the United States.

October Term, 1956

No.

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED,

Petitioners

against

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Third Circuit in the above case.

OPINIONS BELOW.

The opinion of the District Court (a copy of which is appended to this petition as Exhibit A) is reported at 142 F. Supp. 561.

The opinion of the Court of Appeals (a copy of which is appended to this petition as Exhibit B), reversing the District Court, is reported at 241 F. 2d 690.

JURISDICTION.

The judgment of the Court of Appeals (a copy of which is appended to this petition as Exhibit C) is dated February 28, 1957 and was entered on that date.

A petition for rehearing, filed with the Court of Appeals on March 11, 1957, was denied on March 15, 1957. A copy of the order of denial is appended to this petition as Exhibit D.

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1254, 2101.

QUESTION PRESENTED.

The decedent, without medical examination, purchased three single premium life insurance policies and, as a condition of buying these policies, also purchased three single premium annuity contracts. She assigned the life insurance policies divesting herself of all interests in them. The assignees, who were also the beneficiaries, received the insurance proceeds on her death. The decedent retained the annuity contracts and received the annuity payments thereunder until her death.

The question is whether (1) the death proceeds of the life insurance policies or (2), in the alternative, their cash surrender values are includible in the decedent's gross estate, for estate tax purposes, under Section 811(c)(1)(B) of the Internal Revenue Code of 1939 as transfers in respect of which she retained the income for life or for a period not in fact ending before her death.

STATUTE AND REGULATIONS INVOLVED.

The statute involved is Section 811(c)(1)(B) of the Internal Revenue Code of 1939 and the regulations involved are Treasury Regulations 105, Section 81.18. The texts of the statute and regulations are set forth in the Appendix, *infra*.

STATEMENT OF THE CASE.

This is a suit by the executors under the will of Mary H. Haines, deceased, for refund of federal estate taxes (R. 3a-4a). The facts were stipulated (R. 3a) and may be summarized as follows:

The decedent in 1934 purchased three single premium insurance policies covering her life and also at the same times purchased three single premium non-refundable annuity contracts (R. 4a-5a). Each insurance policy was issued without medical examination on condition that the decedent purchase an annuity contract (R. 6a). She, however, could have purchased the identical annuity contracts at the prices she paid for them without buying the insurance (R. 5a). The separate premiums for each policy and contract were at the regular rates for a person of decedent's age (R. 5a, 11a-12a). The aggregate premiums paid for each insurance policy and annuity contract bought with it exceeded the face amount of the insurance, this being required by the issuing companies to protect themselves in the event the decedent died shortly after the purchase (R. 11a-12a).

During her life, the decedent assigned two of the life insurance policies to her children, giving them the right to exercise and enjoy every option, benefit, right and privilege conferred by the policies prior to their maturity (R. 6a-7a). This included, among other things, the right to surrender them and receive their cash surrender values, to change the beneficiaries, to borrow on the policies, and to receive dividends on them (Exhibits A and B, Stipulation of Facts; R. 6a-7a, 9a-10a). As to the third life insurance policy, the decedent assigned all options, benefits, rights and privileges prior to maturity to a trustee of a trust (R. 7a-8a). Like the first two policies, this included the right to cash it in, to borrow on it, and to receive dividends on it (Exhibits C, G and H, Stipulation of

Facts; R. 7a-8a). After July 6, 1938, the decedent had no beneficial or reversionary interest in the trust (R. 6a) and no reversionary interest in any of the three life policies (R. 6a, 8a). The decedent filed a gift tax return reporting as gifts the transfer of the three life insurance policies and paid gift tax thereon (R. 8a). If the assignees had surrendered the policies for their cash surrender values, this would not have affected at all the annuities the decedent was receiving, and continued to receive until her death, under the annuity contracts which she had retained (R. 6a). In so far as the record shows, if the assignees had cashed in the life insurance policies, there were no restrictions whatever on their use of any cash so received except that the trustee, as assignee of the one policy, would have held the cash it received subject to the trust (Exhibits G and H, Stipulation of Facts). The assignees did not surrender and cash in life insurance policies during the decedent's life (R. 11a).

In addition to being assignees of the two life insurance policies, the children were the named primary beneficiaries of all three such policies (R. 6a-7a). Thus, they received the full proceeds of all the life insurance upon the decedent's death in 1946 (R. 3a, 11a), to the exclusion of a trustee named by the decedent as a contingent beneficiary to take the share of any child dying before her (Exhibit C, Stipulation of Facts; R. 6a-7a). In summary form the assignees and named beneficiaries of the three life insurance policies were as follows:

		Named Beneficiaries	
	Assignees	Primary	Contingent
Two Life Insurance Policies	Decedent's children	Decedent's children	Trustee
Third Life Insurance Policy	Trustee	Decedent's children	Trustee

The executors did not include any of the value of the life insurance in the decedent's gross estate (R. 3a-4a). The Commissioner of Internal Revenue determined that the full insurance proceeds were includible and therefore asserted a deficiency in estate tax of about $97,000, which was paid (R. 3a-4a). Claim for refund was thereafter filed and disallowed (R. 4a). Petitioners then brought this suit in the District Court for refund (R. 4a), the jurisdiction of that Court being invoked under Title 28, United States Code, Section 1340, and Section 3772 of the Internal Revenue Code of 1939.

The District Court, Judge Kraft writing the opinion, considered the premiums paid for each life policy and the annuity contract bought with it to be an investment but one which was divisible and separable since the decedent had the right, which she exercised by the assignments, to separate the life insurance policies from the annuity contracts. It, therefore, following the decision of the Court of Appeals of the Seventh Circuit in *Bohnen v. Harrison*, 199 F. 2d 492 (1952), affirmed *per curiam* by this Court in a four-to-four decision, Justice Jackson not participating, 345 U. S. 946 (1953), rehearing denied 345 U. S. 978 (1953), held none of the insurance includible in the decedent's gross estate, since she had retained no income or other interest in the life policies—"in short, she retained no string over the proceeds of these policies" (R. 21a). The Court of Appeals reversed the decision of the District Court on the ground that, notwithstanding the assignments, the lifetime transfers of the insurance policies were essentially testamentary dispositions.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court of Appeals in this case is in direct conflict with the decision of the Court of Appeals for the Seventh Circuit in *Bohnen v. Harrison, supra.*

The factual situation in the *Bohnen* case, in its relevant details, is precisely the same as that here. Just like the

situation here, that decedent procured a policy of life insurance without medical examination for a single premium, and in connection therewith purchased for a separate single premium an annuity contract from the same insurance company. The life insurance policy would not have been issued to that decedent unless she had bought the annuity contract but she could have purchased the annuity without buying the insurance. Each decedent retained the annuity contracts and received the annuity payments thereunder until death but completely assigned the life policies divesting themselves of all interest in the life policies, reversionary or otherwise, and giving the assignees during the decedents' lives the right and privilege, among others, to change the beneficiaries, to borrow on the policies, to surrender them and obtain their cash surrender values. In each case the assignees, as the named beneficiaries, received the proceeds of the life policies on the decedents' deaths since they had not cashed in the policies. Had they cashed them in, the decedents' annuities would not have been affected in any way.

The *Bohnen* case involved the identical statute under the Internal Revenue Code of 1939 that is involved here. But the decision there was that none of the proceeds was includible in the decedent's gross estate, whereas the Court of Appeals in this case held the entire insurance proceeds includible. In the *Bohnen* case the Court of Appeals, like the District Court in this case, considered the insurance separable from the annuity contracts and premised its decision that the decedent had not transferred the insurance and still retained the income from it under Section 811(c)(1)(B) because of her lifetime assignment of all interest in the life insurance, stating (at p. 493):

> "* * * when the insured immediately transferred and assigned all of her right, title and interest of every character in and to the policy of insurance, that unit of her estate passed to the assignees, and was no longer

her property. It could, therefore, under no conception, constitute a part of her taxable estate when she died thereafter."

2. An important question of Federal law is involved here which has not been, but should be, settled by this Court.

For over fifteen years the problem of how to treat insurance in the circumstances presented here has vexed the Bar, the Bench, and the Treasury alike. The essential question in its barest form—still unanswered—is the same: Has a decedent retained the income for her life from property transferred by her and thereafter owned by the transferees although not reduced by them to possession? The precise issue presented here first arose in the Tax Court in 1941 in *Estate of Reynolds v. Commissioner*, 45 B. T. A. 44 and has since plagued the Courts of Appeal of the Second, Third, Sixth and Seventh Circuits, respectively, in *Estate of Burr et al. v. Commissioner*, 156 F. 2d 871 (C. A. 2, 1946), certiorari denied, 329 U. S. 785 (1946), this case, *Conway v. Glenn*, 193 F. 2d 965 (C. A. 6, 1952), and the *Bohnen* case.

Absent a decision by this Court, the uncertainty of the past will continue under the new tax laws, the Internal Revenue Code of 1954. The very same problem will arise under Section 2036(a) of the Internal Revenue Code of 1954, which is identical in all its relevant language to Section 811(c)(1)(B) of the 1939 Code. Nor will any other section of the 1954 Code provide the answer. The one dealing with transfers intended to take effect at or after death is not applicable unless a decedent retains a reversionary interest in the insurance. I. R. C. of 1954, Sec. 2037. Moreover, under the 1954 Code a decedent's payment of premiums will not, as was true here (Sec. 404(c), Rev. Act of 1942, 56 Stat. 945), cause the insurance proceeds to be includible in his gross estate. See I. R. C. of 1954, Sec. 2042.

The decision of the Court of Appeals in the *Bohnen* case presented for the first time a conflict in decisions between the different Courts of Appeal. This Court, recognizing the importance of this issue, granted certiorari in that case upon the Government's petition. Thus it has considered once before the precise question at stake here, but granting of the petition in this case will afford this Court the opportunity to decide the question left unanswered by its four-to-four decision in the *Bohnen* case.

In two other instances this Court also has rendered decisions on varying estate tax aspects of life insurance and annuity contracts purchased under circumstances like those here, yet neither of these decisions answers the question here. In *Helvering v. LeGierse*, 312 U. S. 531 (1941) Mrs. LeGierse bought an insurance policy and an annuity contract under circumstances like those here. She had not assigned the life insurance policy but owned it at her death. Hence, there was no issue such as here, and the basic question was whether her estate could benefit by the then statutory provision permitting an exclusion from the gross estate of $40,000 of life insurance. This Court denied the estate this exclusion on the ground that there was no real insurance at all, because of the absence of insurance risk. Essentially this Court found that the total consideration paid for both contracts represented one investment, but this Court also expressly recognized, in accordance with the facts, that this investment was divisible and separable, stating (at p. 541):

> "It is true that the 'insurance' contract looks like an insurance policy * * * and could have been assigned or surrendered without the annuity."

Also there was *Goldstone v. United States*, 325 U. S. 687 (1945) where an altogether different statute was involved. Because that decedent possessed at death a reversionary interest in the assigned life policy, this Court held the proceeds includible in his estate as a transfer intended to take effect at or after his death under Section

811(c)(1)(C) of the Internal Revenue Code of 1939. As in the *Bohnen* case that Section is inapplicable here because the decedent retained no reversionary interest in the transferred property. I.R.C. of 1939, Sec. 811(c)(2).

As evidenced by the many litigated cases, the purchase of insurance and annuity contracts in like situations has been common. The question here is also a live one today. The matter is one of importance, and there is no indication that it will be any less so in the future. The Solicitor General has acknowledged its continuing importance in his petition for certiorari in the *Bohnen* case, where it was stated (at p. 11):

> "The decision below raises an issue of continuing importance in the administration of the estate tax."

This frequently litigated question remains open and undecided. It should be settled.

3. The decision of the Court of Appeals below is clearly wrong and does not reach or answer the real issue in controversy.

Some of the language in the opinion of the Court of Appeals in this case is confusing and may be misleading. Therefore, that opinion will be briefly referred to. The opinion might lead to the belief that the assignees' right to cash in the life insurance policies was limited or that their use of any cash so obtained was not subject to present enjoyment. There is no warrant in the record for any such implication; under the assignments the assignees had the absolute right to cash in the life policies. The Government has conceded this to be so as stated in its brief before the Court of Appeals:

> "During her lifetime, the decedent assigned the life insurance policies, but the assignees neither borrowed on the policies nor exercised their privilege to take the cash surrender value." (Brief p. 3.)
>
> "Even though the decedent's children, or the trustee, in the case of the Hancock policy, had the right to

borrow on the life insurance policies and to obtain the entire cash surrender value, * * *." (Brief p. 16.)

The opinion of the Court of Appeals below might also lead one to believe that the instant case is distinguishable on its facts from the *Bohnen* case. Petitioners and the Government believe otherwise. At the hearing before the Court of Appeals, His Honor Judge Hastie asked a question to which Government Counsel, Mr. Rothschild, replied, the exchange being as follows:

"Judge Hastie: You agree that Burr and Bohnen and Conway are all indistinguishable from this case?

"Mr. Rothschild: That is our contention. And we agree that the Bohnen case is certainly indistinguishable in all material respects. If there are any differences they are not material for the purposes of this case."

Coming now to the statute, Section 811(c)(1)(B), according to its pertinent terms, will apply if a decedent makes a lifetime transfer of property and, quoting the statutory words in part, "he has retained" out of the transferred property the right to enjoy the income from it either for life, or for any period which does not in fact end before his death. The crux of this case is that these provisions are not satisfied at least with regard to that part of the investments represented by the cash surrender values of the life insurance policies, since before the decedent's death these separable and divisible amounts in their entirety, except for actual possession, belonged to the assignees. First, this is particularly clear with respect to the cash surrender values of the two life policies, which upon issuance were assigned to the children (R. 6a-7a). The decedent retained nothing whatever for any period of time from these cash surrender amounts. (After July 6, 1938, when she had completely assigned (R. 7a) the third life policy to the trustee, it is also clear that she had retained nothing from this policy). How in these circumstances could the decedent, having so given away these

amounts completely, be said at the same time to have retained something from them? Even if we assumed that the decedent derived some benefit from the cash surrender values being allowed by the assignees to remain in the hands of the insurance companies, though none is discernible, any such benefit would be a gift from the assignees and surely nothing she herself had retained or reserved, which the statute requires. The cases also show that the decedent himself must have done the retaining. *Estate of E. M. Uhl v. Commissioner*, 241 F. 2d 867 (C. A. 7, 1957); *Helvering v. Mercantile-Commerce Bank & Trust Company*, 111 F. 2d 224 (C. A. 8, 1940), certiorari denied, 310 U. S. 654 (1940); *Estate of Sessoms, et al. v. Commissioner*, 8 T. C. M. 1056 (1949). Second, with respect to the increases in the cash surrender values of the life policies taking place after the complete assignments of them, it is equally clear that the statute also is not satisfied. The simple reason again is that the assignees during the decedent's life, although not beginning with the assignment had, irrespective of her death, the one hundred percentum beneficial ownership of these amounts, including the right to all income therefrom and principal thereof. This is as true with respect to the amount of these increases just before her death as it is to such increases six months or a day before her death. In all such cases, it cannot be said that the decedent retained the income from these amounts for her life or for a period in fact ending with her death.

Apart from the above which constitutes the key to this case, the only interests the decedent retained—the annuity payments under the annuity contracts—did not, in any event, have their source in, and were not income from, that part of the investments represented by the cash surrender values, since these annuity payments would have continued precisely as before had the life policies been cashed in. Under the statute, only the property which is producing the income retained by the decedent is includible. Thus, also this requirement of the statute is not satisfied. Cash-

ing in the life policies, moreover, would have been altogether different from a sale by a remainderman of his remainder interest in a trust. In such circumstances, the entire trust corpus remains in the trustee's hands to throw off income for the life tenant, and neither the remainderman nor the new owner of the remainder interest can obtain permission from the trustee of the underlying trust properties until the trust ends. The opposite was true here.

The confusion in the cases, it is believed, has been caused by the failure of the courts to break down the aggregate investment (total premiums paid) into its separable parts, namely the cash surrender value which the assignees owned during the decedent's life and the excess over this amount which the assignees received on her death. Conceivably the decedent's death brought about an economic shift of this excess, but surely not with respect to (a) the cash surrender values of the life policies at the time of the complete assignments or (b) the higher cash surrender values just before the decedent died.

If the decision of the Court of Appeals in this case were allowed to stand, the statute would be sadly misconstrued. The fault would lie in the assignees' failure to reduce to possession that which they had every right to. Surely the mere reducing or not reducing to possession the cash surrender amounts cannot, in the light of the statutory language, be determinative.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT T. MCCRACKEN,
JOHN B. LEAKE,
Counsel for Petitioners.

Dated: May 13, 1957.

Appendix.

STATUTE AND REGULATIONS INVOLVED.

Internal Revenue Code of 1939.

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * *

(c) [as amended by Section 7(a) of the Act of October 25, 1949, c. 720, 63 Stat. 891] *Transfers in Contemplation of, or Taking Effect at, Death*—

(1) *General Rule.*—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

* * *

(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

* * *

(26 U. S. C. 1946 ed., Supp. III, Sec. 811.)

Treasury Regulations 105.

Sec. 81.18 [as amended by T. D. 5834, 1951-1 Cum. Bull. 72]. *Transfers with possession or enjoyment retained*—(a) *General Rule.*—Except in the case of a bona fide sale for an adequate and full consideration in money's worth, section 811(c)(1)(B) requires the inclusion in the gross estate of the value of all property transferred by the decedent, whether in trust or otherwise, if the decedent retained or reserved the use, possession, right to the income, or other enjoyment of the transferred property (1) for his life; or (2) for any period not ascertainable without reference to his death; or (3) for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period. Except as provided in paragraph (b) of this section, such property is includible without regard to the date when the transfer was made, whether before or after the enactment of the Revenue Act of 1916.

* * *

(b) *Estate of decedents dying before January 1, 1950.* In the case of a decedent who died before January 1, 1950, property shall not be included in the gross estate under this section unless transferred—

(1) after March 3, 1931, and before June 7, 1932, and the retention or reservation by the decedent was (A) for his life or (B) for such a period as to evidence his intention that it should extend at least for the duration of his life, and his death occurs before the expiration of such period; or

(2) on or after June 7, 1932.

* * *

EXHIBIT A.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 14406.

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES,

Plaintiffs

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE,

Defendant

OPINION.

KRAFT, *J.* June 27th, 1956.

Plaintiffs seek to recover from the Collector of Internal Revenue a refund of estate tax deficiency assessed against and paid by the estate of Mary H. Haines, deceased, in the amount of $103,280.84 with interest. Detailed factual admissions, stipulations and findings are filed contemporaneously.

In April, 1934 Mrs. Haines, then aged 76, purchased a single premium life insurance policy in the amount of $200,000 for a premium of $179,358. On the same day she purchased from the same insurance company for a premium of $40,642 a non-refundable annuity contract which provided an annual payment of $5,026 to her for life, any balance on her death reverting to the company. In October, 1934 Mrs. Haines purchased from the same company another single premium life insurance policy in the amount

of $100,000 for a premium of $90,642. On the same day she also purchased from that company for a premium of $19,358 a non-refundable annuity contract which provided an annual payment of $2,440.64 to her for life, any balance at her death reverting to the company.

Both life insurance policies issued by this company designated as equal primary beneficiaries the four named children of Mrs. Haines and designated the Fidelity-Philadelphia Trust Company, as trustee under a trust agreement, as contingent beneficiary of the share of any of the children of Mrs. Haines who predeceased her. Pursuant to her written application for the policies each of these two life policies was issued designating her as the "Insured" and containing the provision noted in the margin.[1]

Later in October, 1934, Mrs. Haines purchased from a different company a third single life insurance policy in the amount of $50,000 for a premium of $43,491. On the same day she purchased from that company for a premium of $10,509 a non-refundable annuity contract which provided an annual payment of $1,295.56 to her for life, any balance at her death reverting to the company. Mrs. Haines' four children were named as beneficiaries of this life policy in which she reserved no right to change the beneficiaries; however, as issued, the policy proceeds were payable to her executors or administrators if her four children predeceased her. Thereafter, by assignment, Mrs.

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1. RIGHTS: Anything in this policy to the contrary notwithstanding, prior to the maturity of this policy, the Insured's children Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines jointly, the survivors or survivor, if none of said children be living, then the living children of said children of the Insured, jointly or the survivors or survivor, if none of the children of said children of the Insured be living, then to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured, some of the beneficiaries may, without the consent and to the exclusion of the Insured or any other beneficiary, receive, exercise, and enjoy every benefit, option, right and privilege conferred by this policy or allowed by the Company.

Haines included this life policy in a schedule forming part of the trust agreement between her and Fidelity-Philadelphia Trust Company and thereupon nominated that company, as trustee, to be contingent beneficiary of the policy which was amended so to provide on November 22, 1934. Under the terms of the trust agreement Mrs. Haines had reserved to herself all benefits, privileges and options available to her under this life policy including the rights of dividend receipt, assignment and surrender. She had reserved also the right to change, amend or revoke the trust agreement. On July 6, 1938 Mrs. Haines amended the trust agreement by assigning irrevocably to the trustee for the purposes of the trust all her right, title and interest in this and any other policy under the trust and by irrevocably empowering the trustee to exercise and enjoy all options, benefits, rights and privileges under this and other policies. By the same amendment she further provided that the trust agreement as so amended was thereafter unalterable and irrevocable. After July 6, 1938 neither Mrs. Haines nor her estate had any beneficial or reversionary interest in the trust or any reversionary interest in any of the three life policies.

In 1935 the four children filed appropriate returns reporting the receipt by each, as gifts from their mother, of a one-fourth interest in each of the life policies. In the same year Mrs. Haines suitably reported gifts of the three life policies to her children and paid gift taxes thereon.

The insurance companies required that the annuity contracts be purchased as a condition of issuance of the respective life policies. The annuity contracts and the annuity payments made to Mrs. Haines thereunder were not based upon or in any way dependent on the premiums paid by her for the respective life policies. The insurance companies would have issued these annuity contracts to Mrs. Haines or to any other person of her age for the same premiums without purchase of any life policies.

The deficiency assessment and the denial of the plaintiffs' refund claim were based on the contention that the life insurance policies were an investment rather than life insurance and that the value was taxable in decedent's gross estate under Section 811(c) of the Internal Code[2] either

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2. Sec. 811. Gross estate

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(c) [as amended by Section 7(a) of the Act of October 25, 1949, c. 720, P. L. 378 (81st Cong.*)] transfers in contemplation of, or taking effect at, death:

* Section 7(b) of the Act of October 25, 1949 made this section as amended applicable to estates of decedents dying after February 10, 1939.

(1) General rule. To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

(A) in contemplation of his death, any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without consideration, shall unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter; or

(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

(C) intended to take effect in possession or enjoyment at or after his death. . . .

(2) Transfers taking effect at death—transfers prior to October 8, 1949. An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1) (C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 per centum

as transfers intended to take effect in possession or enjoyment at or after death or as a transfer in decedent's lifetime of property, the right to income from which the decedent retained for life.

A transfer in which the transferor retains the income for life is quite different from a transfer intended to take effect in possession or enjoyment at or after death. Subsection (B) of Section 811(c)(1) of the Revenue Code of 1939 applies to the former and subsection (C) of that Section to the latter. The transfer by the present decedent

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of the value of such property. For the purposes of this paragraph, the term 'reversionary interest' includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Commissioner with the approval of the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate.

Section 7(b) of Act of October 25, 1949, c. 720, P. L. 378 (81st Cong.)

(b) The amendment made by subsection (a) shall be applicable with respect to estates of decedents dying after February 10, 1939. The provisions of section 811(c) of the Internal Revenue Code, as amended by subsection (a), shall (except as otherwise specifically provided in such section or in the following sentence) apply to transfers made on, before or after February 26, 1926. The provisions of section 811(c)(1)(B) of such code shall not, in the case of a decedent dying prior to January 1, 1950, apply to—

(1) a transfer made prior to March 4, 1931; or

(2) a transfer made after March 3, 1931, and prior to June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516). No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made prior to the date of the enactment of this Act.

occurred before October 7, 1949. Hence, even if Section 811(c)(1)(C) were applicable the inclusion of the value of the life insurance policies is barred by Section 811(c)(2) since the decedent retained no reversionary interest in the property transferred arising by the express terms of the instrument of transfer.

The defendant's earlier position, that the value of the three life policies were includible in the decedent's gross estate as transfers intended to take effect in possession or enjoyment at or after her death, appears to have been abandoned by the defendant in his brief and oral argument.

Determination of whether the value of the life policies are includible in decedent's estate as a transfer in her lifetime of property, the income or right to income from which she retained for life, involves a consideration of the applicability and rationale of the conflicting decisions upon which plaintiffs and defendant rely. Plaintiffs' prime dependence is upon Bohnen v. Harrison, 7 Cir., 199 F.2d 492.[3] Defendant is afforded support by Burr v. Commissioner of Internal Revenue, 2 Cir., 156 F.2d 871;[4] Conway v. Glenn, 6 Cir., 193 F.2d 965, and Estate of Reynolds v. Commissioner, 45 B.T.A. 44.

In the Burr case the decedent purchased three life policies and an annuity contract and irrevocably assigned the life policies to his children. The Court said:

> "The two purchases were obviously a single transaction, the annuity premium being part of the consideration for the insurance policies. Unless differentiated because of the subsequent assignment, therefore, the case is squarely within the Supreme Court's decision in Helvering v. Le Gierse, 312 U.S. 531, 61 S.Ct. 646, 85 L.Ed. 996, holding the proceeds of the policies taxable under § 811(c)."

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3. Affirmed per curiam by an equally divided court in 345 U. S. 946 (1953).

4. Cert. den. 329 U. S. 785 (1946).

With this construction of the Le Gierse case I am unable to agree. In Le Gierse, the life policy and annuity contract were similar to those in the instant case. However, that decedent had never assigned the life policy and still owned it at his death. It was payable to his daughter as beneficiary. His estate contended only that the policy proceeds were "insurance" and, being within the $40,000 exemption, were not includible in the estate. No contention appears to have been made by the estate in Le Gierse that the policy proceeds were not taxable as a transfer intended to take effect at death, if the proceeds were not "insurance." The basic question before the Supreme Court was whether the policy proceeds constituted an amount "receivable as insurance" within the meaning of § 302(g) of the Revenue Act of 1926. The Supreme Court held that, for purpose of determining whether the proceeds of the life policy were "insurance" within the meaning of § 302(g) the life insurance policy and the annuity contract must be read together, and that, so read, no essential element of risk existed and, hence, the proceeds were not true "insurance." The Supreme Court did not say that the two contracts were for all purposes indivisible or inseparable as the Burr and Conway v. Glenn cases decide. On the contrary the right of policy assignment was expressly recognized[5] in Le Gierse, but was deemed immaterial to the question of insurance risk then under consideration.

The Court's statement in Burr that the two purchases were a single transaction and that the annuity premium was part of the consideration for the insurance policies is true only in the sense that the insurance company would not have issued the life policies without the simultaneous purchase of the annuity. Unless the factual situation there presented differed from the present case or was misconstrued, it was erroneous to infer that the premiums for the life policies and the annuity contract were so commingled as to render the policies and the annuity one indivisible

5. 312 U. S. 531, 541.

asset. In the present case plaintiffs and defendant agree that no part of the premiums for the life policies paid for any annuity contracts and that the annuity premiums paid for no part of the life policies; further, that the present decedent or any other person her age could have purchased the same annuity contracts from the same companies for the same premiums without any life insurance.

The Court's conclusion in the Burr case that the decedent's transactions were an investment rather than insurance accords with the Le Gierse decision. That conclusion, however, does not justify the determination, unsupported by Le Gierse, that an investment so made is then and thereafter indivisible and inseparable.

The Burr case and Conway v. Glenn, supra, which followed it, gave scant attention to the import of Goldstone v. United States.[6] There the decedent had purchased and paid for a life insurance policy and annuity contract. As issued the life policy designated his wife as "Owner" and the decedent as the "Insured," and was payable on his death to his wife or, if she predeceased him, to their daughters. If all designated beneficiaries predeceased the decedent the policy proceeds were payable to his executors or administrators. The annuity contract, as issued, designated the wife as "Purchaser" and the decedent as "Annuitant." This contract provided for equal semi-annual payments to the decedent during his lifetime and for the payment of $6,071.46 to his wife upon his death or, if she predeceased him, to their daughters or, if they were dead, to his estate. Under both contracts the wife had the unrestricted power to assign, borrow, receive dividends, change beneficiaries and surrender. Both contracts provided that, if the wife predeceased the decedent, all of the enumerated powers were to vest in the decedent to the extent that such powers had not otherwise been exercised by the wife. The Court said:[7]

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6. 325 U. S. 687 (1945).
7. 325 U. S. at 690.

"*Helvering v. Le Gierse*, 312 U. S. 531, makes it plain that these two contracts, which must be considered together, contain none of the true elements of insurance risk. Section 302(g) of the Act, relating to amounts receivable 'as insurance under policies taken out by the decedent upon his own life,' is therefore inapplicable."

The Court then decided that the proceeds of the life policy and the balance of the annuity contract payable to the widow were includible in the decedent's gross estate under Section 302(c) as the subject of a transfer intended to take effect in possession or enjoyment at or after the decedent's death. The Court said:[8]

"The decedent, in making disposition of $25,000 of his property through these two contracts, retained a valuable interest in that amount which was not extinguished until he died. He retained not only the right to semi-annual payments under the annuity contract but also a contingent reversionary interest in the entire proceeds of both contracts. Had he survived his wife he could have exercised the attributes of ownership over the contracts, changing the beneficiaries or surrendering the contracts as he saw fit. If he had survived both his wife and his daughters the proceeds of the two contracts would automatically have been payable to his estate when he died. Thus the ultimate disposition of the proceeds of the contracts was suspended until the moment of decedent's death. Only then did the respective interests of the wife and daughters become fixed; only then were their interests freed from the contingency of the decedent's survival. His death was the decisive fact that terminated all of his potential rights, and insured the complete ripening of the wife's interests. . . . The string that the decedent retained over the proceeds of the contracts until the moment

8. 325 U. S. at 691-692.

of his death was no less real or significant because of the wife's unused power to sever it at any time.

The essential element in this case, therefore is the decedent's possession of a reversionary interest at the time of his death, delaying until then the determination of the ultimate possession or enjoyment of the property. The existence of such an interest constitutes an important incident of ownership sufficient by itself to support the imposition of the estate tax." (Emphasis supplied.)

While the specific question in the instant case was left undecided in Goldstone, it is clear that the decision did not give to Le Gierse the interpretation put upon the latter by the Burr case nor did it indicate indivisibility or inseparability. If, therefore, the present decedent had the right to separate the life insurance contracts from the annuity contract and to dispose of the former, she must be held to have done so conformably with the Goldstone decision since neither she nor her estate retained any direct or reversionary interest, contingent or otherwise, in the three life policies—in short, she retained no string over the proceeds of these policies after July 6, 1938.

That the life insurance policy is separable from the annuity contract under such circumstances as here exist was decided in a well-reasoned opinion in Bohnen v. Harrison in which the Court said:[9]

"Though the Supreme Court has decided that such an arrangement is in the nature of a single investment program and, therefore, not within the definition of insurance mentioned in the former act, $40,000 of which was then allowed to be deducted from the gross estate of a decedent, it does not follow that this investment program, made up of the two contracts, was indivisible. On the one hand, it is obvious that for the consideration

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9. 199 F. 2d at 493.

of some $22,000 a fixed annuity of $1600 was bought and that, on the other, in consideration of the sum of some $53,000 advanced, the company agreed to pay, at the insured's death a fixed sum of $72,000. The annuities were not based upon and in no wise dependent upon any consideration given for the life policy. The money to be paid under the life contract was in no wise based or dependent upon the sum advanced to secure the annuities. The two contracts constituted independent units, two pieces of property. Consequently, when the insured immediately transferred and assigned all of her right, title and interest of every character in and to the policy of insurance, that unit of her estate passed to the assignees, and was no longer her property. It could, therefore, under no conception, constitute a part of her taxable estate when she died thereafter."

The determination should rest upon the realities of the situation and the essential nature of the donee's ownership. The realities of the situation are that this decedent made investments which were not true insurance because no risk element to the insurer was involved. However, the life policies and annuity contracts were, on their faces, separate contracts and, while they must be read together to determine the realities, no valid reason is advanced by the defendant to hold that such an obligatory joint perusal welds them together permanently and indissolubly for all purposes.

Judgment will be entered in favor of the plaintiffs upon submission within fifteen days of an appropriate form of judgment.

C. William Kraft, Jr.,

J.

EXHIBIT B.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,067

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED,

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued January 24, 1957

Before BIGGS, *Chief Judge*, and MCLAUGHLIN and HASTIE, *Circuit Judges.*

OPINION OF THE COURT

(Filed February 28, 1957)

By MCLAUGHLIN, *Circuit Judge.*

The question here is whether a death payment under a contract with a life insurance company is includible in the gross estate of the decedent under Section 811(c)(1)(B)

of the Internal Revenue Code of 1939, as amended, 26 U.S.C. 1952 ed. Sec. 811.[1]

In 1934, decedent, aged seventy-six, purchased three single premium insurance policies on her life. As a condition for the issuance of each policy the insurors required decedent to purchase an annuity in such amount that the sum of the premiums for death payment and annuity would equal approximately 11 10ths of the face amount of the death payment. In the policies decedent's four children were named primary beneficiaries and the Fidelity-Philadelphia Trust Co. (as trustee under a trust agreement) contingent beneficiary of the share of any of the decedent's children who predeceased her. In 1935, decedent reported on a gift tax return the interests transferred and paid the gift taxes thereon. By July 6, 1938, decedent had assigned irrevocably and unalterably to the beneficiaries all her

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1. Internal Revenue Code of 1939:

"Sec. 811. Gross Estate.

"The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * *

"(c) [As amended by Sec. 7(a), Act of October 25, 1949, c. 720, 63 Stat. 891] Transfers in Contemplation of, or Taking Effect at, Death.—

"(1) General rule.—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

* * *

"(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom; or * * *"

rights in all death payments.[2] Until the date of death, decedent retained the annuity interests.

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2. As to the assignments of the three policies the findings are as follows:

"21. Pursuant to decedent's written application for the policies, each of the two life policies issued by The Mutual Life Insurance Company of New York contained at and after issue the following provision:

"RIGHTS: Anything in this policy to the contrary notwithstanding, prior to the maturity of this policy, the Insured's children Isabella H. Miller, Margaret W. Haines, Robert B. Haines and Charles H. Haines jointly, the survivors or survivor, if none of said children be living, then the living children of said children of the Insured, jointly or the survivors or survivor, if none of the children of said children of the Insured be living, then to the executors or administrators of the last survivor of said children of the Insured and the children of said children of the Insured, some of the beneficiaries may, without the consent and to the exclusion of the Insured or any other beneficiary, receive, exercise, and enjoy every benefit, option, right and privilege conferred by this policy or allowed by the Company.

"22. The decedent's four children were named as beneficiaries of the life insurance policy issued by John Hancock Mutual Life Insurance Company in which no right to change beneficiaries was reserved to the decedent. The policy, as issued, provided for the payment of the proceeds to the decedent's executors or administrators if her four children predeceased her. The decedent assigned this life policy to Fidelity-Philadelphia Trust Company, trustee, under a trust agreement between her and that company, and then nominated that company as trustee to be contingent beneficiary of this life policy, and on November 22, 1934 the policy was amended so to provide.

"23. Under the trust agreement decedent had reserved to herself all benefits, privileges and options available to her under the life insurance policy issued by John Hancock Mutual Life Insurance Company including rights of dividend receipt, assignment and surrender and had also reserved the right to change, amend or revoke the trust agreement. On July 6, 1938 the decedent amended the trust agreement by assigning, irrevocably to the trustee for trust purposes all her right, title and interest in this and any other policy subject to the trust agreement and by irrevocably empowering the trustee to exercise and enjoy all options, benefits, rights and privileges under this and any other policy subject to the trust agreement. By the same amendment the decedent further provided that the trust agreement as so

Decedent died May 7, 1946. In the estate tax return filed August 6, 1947, the death payments under the above contracts were not included in the gross estate. The Commissioner, under Sec. 811(c)(1)(B), assessed and collected a deficiency resulting from an audit which included those payments. After a claim for refund was disallowed, this suit was brought in the district court. The estate prevailed below and the government appealed.

Helvering v. LeGierse, 312 U. S. 531 (1941) removed the "life insurance" label from transactions such as these and directed that they be treated as investments. Goldstone v. United States, 325 U. S. 687 (1945), held the death payment in this type of transaction includible in the gross estate. Since then in United States v. Tonkin, 150 F. 2d 531 (3 Cir. 1945), cert. den. 326 U. S. 771, we held a similar death payment includible. The present situation is allegedly beyond the reach of those authorities as a result of the assignment of all the decedent's rights except the annuity to the trustee. That precise issue has been decided for the government in Reynolds v. Commissioner, 45 B.T.A. 44 (1941); Burr v. Commissioner, 156 F.2d 871 (2 Cir. 1946), cert. den. 329 U.S. 785; Conway v. Glenn, 193 F.2d 965 (6 Cir. 1952). The Court of Appeals for the Seventh Circuit did reach the opposite result in Bohnen v. Harrison, 199 F.2d 492 (7 Cir. 1952), Judge Duffy dissenting, affirmed by an equally divided court, 345 U.S. 946, rehearing denied, 345 U.S. 978. However, in a later opinion, Greene v. United States, 237 F.2d 848 (7 Cir. 1956), that court, construing the same section, 811(c)(1)(B), squarely conceded that "The decisive issue is whether, looking to substance and not merely to form, the decedent had retained for her life the right to the income from the property transferred."

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amended was thereafter unalterable and irrevocable. Neither decedent nor her estate had any beneficial or reversionary interest in the trust she created nor any reversionary interest in the life insurance policy issued by John Hancock Mutual Life Insurance Company after July 6, 1938."

The district court in following the Bohnen case misconstrues the Goldstone opinion. In the latter the court included the death payment in the gross estate on the ground that the decedent retained a contingent reversionary interest under Helvering v. Hallock, 309 U.S. 106 (1940), and found it unnecessary to reach the question whether the retention of the life annuity interest involved required its inclusion. There is nothing in Goldstone to support taxpayers' position.

It is urged that the annuity interests are completely separate and independent of the death payments and therefore cannot be encompassed by the following language of Sec. 811(c)(1)(B)—"* * * retained for his life * * * the right to income from the property * * * ". To demonstrate this independent taxpayers point to the fact that the annuity interests could be purchased by any one the age of the decedent for the same premium independent of the death payment. The illustration fails completely to show the independence of the death payment from the income payments for admittedly the death payment could not be bought without the income payments and it is the death payment which is sought to be included in the estate.

The argument itself exalts form over substance in an arrangement where the Supreme Court has specifically directed that the form be ignored. Helvering v. LeGierse, supra. The substance of the matter is that a capital fund—the premium—was deposited with the insurance company for a guaranteed annual return and repayment of the residue to beneficiaries on the death of the depositor. But for the insurance company's guarantee of the payments, it is identical to a transfer in trust with the settlor taking back a beneficial life interest. The assignments of all rights to the beneficiaries do not change the result. In the first place it does not appear that the beneficiaries received anything substantial since they were all contingent beneficiaries and survivorship was unknowable until the death of the decedent. While, theoretically, there may have been a pos-

sibility of anticipating the death payment by a cash surrender, the anticipators could do nothing with the cash until the survivorshop status was determined. A bare possibility of cash surrender does not change the inherently testamentary nature of this procedure. If a surrender is effected, a different problem is presented. Cf. Hutchinson v. Commissioner, 20 T.C. 749 (1953). Here the plain purpose was to convey the capital sum to the natural objects of the decedent's bounty in testamentary style and retain a life interest in the transferor. The small matter of the cash surrender right is well disposed of in Bank of New York v. Kelly, 135 N.J. Eq. 418 (1944) as follows:

> "In view of the conservative reason for the investment, it seems fantastic to suppose that a cancellation of the policy by Mrs. Parish during the lifetime of the insured at its surrender value was regarded by either as probable. If the decedent had intended to make a complete, absolute, and immediately effective gift, why would he resolve to invest a material portion of his estate in such manner that an enjoyment of it by the donee before his death would necessitate the loss incident to the surrender of the policy. Guggenheim v. Rasquin, 312 U.S. 254, 257. Cash or securities could well have been deposited in the trust instead of a single premium life insurance policy payable upon the event of death and having a surrender value based on a mortality table."

The district court was greatly impressed with the conclusion that the decedent had no ownership rights in the death payment after the assignments. In a sense, a life tenant has no ownership right in the remainder. But possession of legal title to the life policy after the assignment is not controlling. All of Section 811(c) is plainly directed at inter vivos transfers where title is no longer in the decedent at death. Taxation is a practical matter and the shifting of the economic benefits of the investment occa-

sioned by the death of the decedent is too much akin to a testamentary disposition not to be subjected to the same tax under Sec. 811(c)(1)(B). See Helvering v. Bullard, 303 U.S. 297 (1938).

The judgment of the district court will be reversed and the case remanded with the direction that judgment be entered in favor of the defendant (appellant in this court).

EXHIBIT C.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,067

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, 3D, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE, *Appellant*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: BIGGS, *Chief Judge*, and MCLAUGHLIN and HASTIE, *Circuit Judges*.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the case remanded with direction that judgment be entered in favor of the defendant-appellant.

Attest:

IDA O. CRESKOFF,
Clerk.

February 28, 1957

EXHIBIT D.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,067

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE,
Appellant

SUR PETITION FOR REHEARING

Present: BIGGS, *Chief Judge*, and MCLAUGHLIN and HASTIE, *Circuit Judges*.

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

BY THE COURT,

MCLAUGHLIN,
Circuit Judge.

Dated: March 15, 1957

Office - Supreme Court, U.S.
FILED
OCT 16 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957.

No. 130.

FIDELITY-PHILADELPHIA TRUST COMPANY
and
ROBERT B. HAINES, III,
Executors of the Will of Mary H. Haines, Deceased,
Petitioners,

v.

FRANCIS R. SMITH,
Collector of Internal Revenue,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR THE PETITIONERS.

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October 14, 1957.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1957.

No. 130.

FIDELITY-PHILADELPHIA TRUST COMPANY

and

ROBERT B. HAINES, III,
EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED,
Petitioners,

v.

FRANCIS R. SMITH,
COLLECTOR OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE PETITIONERS.

OPINIONS BELOW.

The opinion of the District Court (R. 13a-22a) is reported at 142 F. Supp. 561.

The opinion of the Court of Appeals (R. 84-89), reversing the District Court, is reported at 241 F. 2d 690.

JURISDICTION.

The judgment of the Court of Appeals was entered February 28, 1957 (R. 90). By order dated March 15, 1957, the Court of Appeals denied petitioners' Petition for Rehearing (R. 90-91). The petition for a writ of certiorari was filed May 17, 1957 and was granted June 17, 1957 (R. 91). The jurisdiction of this Court rests on 28, U. S. C., Sections 1254, 2101.

STATUTE AND REGULATIONS INVOLVED.

The statute involved is Section 811(c)(1)(B) of the Internal Revenue Code of 1939 and the regulations involved are Treasury Regulations 105, Section 81.18. The texts of the statute and regulations are set forth in the Appendix, *infra*.

QUESTION PRESENTED.

The decedent, without medical examination, purchased three single premium life insurance policies. As a condition of buying these policies, she also purchased three single premium annuity contracts. She irrevocably assigned to her children—and to a trustee in the case of one policy—every right, privilege, benefit and option under the life policies (including the right to surrender them and to receive their cash surrender values as well as dividends on them). She thus divested herself of all interests in the life insurance policies. But the annuity contracts she retained and received the annuity payments thereunder until her death. Her children, as beneficiaries of the life policies, received the full life insurance proceeds on the decedent's death.

The question is whether (1) the cash surrender values of the life insurance policies or (2), in the alternative, the full life insurance proceeds are includible in the decedent's gross estate, for estate tax purposes, under Section 811(c)(1)(B) of the Internal Revenue Code of 1939 as property transferred by her but in respect of which she retained the income either for life or for a period not in fact ending before her death.

STATEMENT.

This is a suit by the executors under the Will of Mary H. Haines, deceased, for refund of Federal estate taxes of about $97,000 (R. 3a-4a).

In 1934 the decedent purchased three single premium insurance policies covering her life and, at the same times, also purchased three single premium non-refundable annuity contracts (R. 4a-5a). Each life insurance policy was issued without medical examination on the condition that the decedent purchase an annuity contract (R. 6a). She could, however, have purchased the identical annuity contracts at the prices she paid for them without buying any insurance (R. 5a). During her life, the decedent irrevocably assigned to her children the exclusive right to exercise and enjoy every right, privilege, benefit and option conferred by two of the life insurance policies (R. 6a-7a). This included the right to cash in the policies, to receive dividends on them, to change the beneficiaries and to borrow on them (Exs. A, B; R. 25-51). In respect of the third life insurance policy, the decedent made a similar assignment to a trustee of a trust giving the trustee like rights and benefits (Ex. C; R. 7a-8a, and 52-61). The decedent's children were the primary income beneficiaries of this trust (Ex. G; R. 71-76). After July 6, 1938 the decedent had no beneficial or reversionary interest in the trust or the three life policies (R. 6a, 8a). The decedent filed a gift tax return reporting as gifts the transfer of the three life policies and paid gift tax thereon (R. 8a), and the children filed donee's gift tax returns with respect thereto (R. 8a).

The assignees did not surrender and cash in the life insurance policies during the decedent's life (R. 11a). But if they had, this would not have affected the annuities the decedent was receiving, and continued to receive until her death, under the annuity contracts (R. 6a). In so far as the record shows, if the assignees had cashed in the policies, there were no restrictions whatever on their use of any cash

so received except that the trustee would have held subject to the trust the cash it received from the policy assigned to it (Exs. G, H; R. 71-78). In summary form, the assignees and named beneficiaries of the three life policies were as follows (R. 6a-8a):

		Beneficiaries	
	Assignees	*Primary*	*Contingent*
Two Life Insurance Policies	Decedent's Children	Decedent's Children	Trustee
Third Life Insurance Policy	Trustee	Decedent's Children	Trustee

To protect itself in the event the decedent died shortly after purchasing the life insurance policy, each insurance company required that the aggregate consideration for each life policy and the annuity contract bought with it exceed the face amount of the insurance policy (R. 11a-12a).[1] The premiums for each life policy and each annuity contract were at regular rates (R. 5a, 11a-13a). None of the insurance premiums paid for any of the annuity contracts, nor did any of the annuity premiums pay, or constitute consideration, for the life policies (R. 5a, 11a-13a).

The face amount of life insurance policy No. 4842239, one of the two assigned to the children, was $200,000 (R. 4a). The premiums paid for it and the annuity contract bought with it aggregated $220,000 (R. 4a). Upon issuance the cash surrender value of this policy was $164,594 (R. 10a), and just prior to the decedent's death it was $186,404 (R. 11a). The death proceeds of this policy were $200,020 (R.

1. The face amount of each life policy was 10/11ths of the aggregate premiums paid for the policy and annuity contract bought with it (R. 11a-12a).

11a).[2] The decedent died May 7, 1946 (R. 3a), and the proceeds of all three life policies were thereupon paid to her children as beneficiaries (R. 11a). All annuity payments under the annuity contracts ceased upon decedent's death and such contracts then had no remaining value (R. 6a).

The District Court, following the decision of the Court of Appeals of the Seventh Circuit in *Bohnen v. Harrison*,[3] 199 F. 2d 492 (1952), affirmed *per curiam* by this Court in a four-to-four decision, Justice Jackson not participating, 345 U. S. 946 (1953), rehearing denied 345 U. S. 978 (1953), held that none of the insurance was includible in the decedent's gross estate, since she had retained no income or other interest in the life policies "in short, she retained no string over the proceeds of these policies" (R. 21a). The Court of Appeals reversed on the ground that, notwithstanding the assignments, the lifetime transfers of the insurance policies were essentially testamentary dispositions (R. 84-89).

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2. The cash surrender values and death proceeds of the two other life insurance policies were as follows (R. 10a-11a):

Policy No.	Cash Surrender Value Upon Issuance	Cash Surrender Value Immediately Prior to Decedent's Death	Death Proceeds
488583o	$83,180	$93,595	$100,028.65
2544451	41,550	46,250	50,000.00

SUMMARY OF ARGUMENT.

1. The decedent's purchase of each life insurance policy and annuity contract constituted a divisible investment which she divided by (a) retaining the annuities and (b) assigning to others all rights under the life policies, including the right to cash them in. By the assignments the decedent gave away completely a large part of her investments, the cash surrender values of the life policies. In making these absolute and unqualified gifts, the decedent parted during her life with her entire bundle-of-ownership rights in these amounts, including the income therefrom and every other benefit therein. She gave away both the fruit and the tree and clearly did not, as required by Section 811(c)(1)(B), retain for her life, or for a period not in fact ending before her death, the income from such cash surrender values.

2. The amounts by which the full insurance proceeds exceeded the cash surrender values are also not includible in her gross estate. The decedent completely assigned during her life everything payable under the life insurance policies. Moreover, the annuity contracts and annuity payments were independent of the insurance since the decedent could have purchased the same annuity income without buying any insurance at all.

ARGUMENT.

1. The Aggregate Premiums Paid for Each Life Insurance Policy and Annuity Contract Constituted a Divisible Investment.

Before proceeding with the substance of the argument in this case, the decision of this Court in *Helvering v. LeGierse*, 312 U. S. 531 (1941) must be noted. In that case, Mrs. LeGierse bought an insurance policy and annuity contract under circumstances like those here, except that she retained and owned both at her death. Hence, there was no question such as here. The issue was whether her estate could benefit by the then statutory provision permitting an exclusion from the gross estate of $40,000 of life insurance. This Court denied her estate the exclusion on the ground that there was no insurance, there being an absence of insurance risk since the total premiums paid exceeded the face amount of the insurance. In the words of the Court of Appeals below (R. 86), that case "removed the 'life insurance' label from transactions such as these and directed that they be treated as investments." The especial significance of the *LeGierse* case, in so far as this proceeding is concerned, is that this Court took cognizance of the fact that the investment, after being made, was divisible and separable since as here the insurance was assignable and surrenderable without the annuity. This Court stated (at p. 541):

> "*It is true that the 'insurance'* contract looks like an insurance policy, contains all the usual provisions of one, and *could have been assigned or surrendered without the annuity.*" (Emphasis added)

THE PART OF THE INVESTMENT REPRESENTED BY THE CASH SURRENDER VALUES.

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2. Decedent Divided Her Investment by (a) Retaining the Annuity Contracts and (b) Irrevocably Assigning the Life Policies. The Assignees Thereby Became Sole and Complete Owners of a Large Part of Each Investment—the Cash Surrender Values of Each Life Policy—and as Sole Owners They Owned All Income and Other Rights Therein.

(a) *As to the Cash Surrender Values at the Time of Assignment, the Decedent Never Retained Anything for Any Period of Time.*

The critical facts in this case are that the decedent divided her investments during her life by retaining the annuity contracts and annuity payments thereunder for herself (R. 6a) and by irrevocably assigning to others every right, privilege, benefit and option under the life insurance policies (R. 6a-8a). By reason of the assignments the assignees became entitled to surrender and cash in the policies, to receive all dividends on them, to change the beneficiaries, and to borrow on them (Exs. A, B, C, G, H; R. 25-78). The effect was to make the assignees, during the decedent's life, the absolute owners of a large segment of each investment, namely the cash surrender value of each life policy.

To illustrate, let us analyze the situation with respect to one policy which was assigned to the children. Life insurance policy No. 4842239 had a face amount of $200,000 (R. 4a). The single premiums paid for this policy and the annuity contract bought with it aggregated $220,000 (R.

4a), this being the investment. Upon issuance the cash surrender value of this life policy was $164,594 (R. 10a) and this increased from year to year (Ex. A; R. 25-37) and just prior to decedent's death was $186,404 (R. 11a). When the assignment of the policy became complete,[3] the decedent's children then had the sole and exclusive right to cash it in and to obtain the cash surrender value, $164,594. At that moment the decedent parted with all possession, title and enjoyment, and her entire bundle-of-ownership rights in that amount, and the children's ownership of that amount was unqualified and unlimited. They were free to do with the cash surrender amount as they wished, to leave it with the insurance company, to take it from the insurance company and to buy government bonds, race horses or anything they may have liked. Their decision was to allow their moneys to remain with the insurance company (R. 11a) with a view to receiving something else on decedent's death, namely, the excess of the full insurance proceeds over the prior-to-death cash surrender value. The critical and inescapable point, however, is that the children alone had the sole right to, and power over, the cash surrender value. Their complete and present right to such amount carried with it the right to all the income and other benefits it might produce, just as the sole owner of a bond or a bank deposit owns and is entitled to every single attribute of his asset. In no way did the decedent limit or postpone their enjoyment of the cash surrender value. In no way could the insurance company—the holder of the funds—postpone or control their enjoyment of it.

Section 811(c)(1)(B) requires of a decedent that "he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the [trans-

3. Upon issuance (Ex. A; R. 6a-7a, and 25-37).

ferred] property . . . .'[4] The statute is simply not satisfied with respect to the cash surrender value at the time of the assignment, $164,954. The decedent never retained anything for any period of time from this amount.

Moreover, the decedent derived no benefit whatever from the children's decision to allow their share of the investment to remain with the insurance company. For the annuity payments which she had retained would not have been affected at all by continuation or termination of the insurance (R. 6a). Even if we assumed, directly contrary to these facts, that the decedent derived some benefit from the cash surrender value remaining with the insurance company, such benefit in any event would be nothing she had retained, as the statute requires, but rather a gift from the assignees. The explicit statutory language is "he has retained", and the cases too show that the decedent must himself have retained a legal right to the income from the transferred property for life. Absent such retention, the statute is not applicable. *In re Uhl's Estate v. Commissioner*, 241 F. 2d 867 (C. A. 7, 1957); *Helvering v. Mercantile-Commerce Bank & Trust Company*, 111 F. 2d 224 (C. A. 8, 1940), certiorari denied, 310 U. S. 654 (1940); *Estate of Sessoms, et al. v. Commissioner*, 8 T. C. M. 1056 (1949); *Richards v. Commissioner*, 20 T. C. 904, 916 (1953).

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4. The decision of this Court in *Goldstone v. United States*, 325 U. S. 687 (1945), although involving an insurance policy and annuity contract purchased under similar circumstances, is irrelevant and inapplicable here (a) because an altogether different statute was in issue, namely, Section 811(c)(1)(C) of the 1939 Internal Revenue Code relating to transfers intended to take effect in possession or enjoyment at or after death and (b) because Goldstone had reserved, and possessed at his death, a reversionary interest in both the life insurance proceeds and also a lump sum payable under the annuity contract. As stated by this Court at page 692:

> "The essential element in this case, therefore, is the decedent's possession of a reversionary interest at the time of his death, delaying until then the determination of the ultimate possession or enjoyment of the property."

What has been said heretofore by way of illustration as to the investment involving life insurance policy No. 4842239 is true with respect to the other two investments.

(b) *As to the Annual Increases in Such Values, the Decedent Did Not Retain the Income Therefrom for Life.*

The cash surrender amounts of all three life insurance policies were higher just before the decedent's death (R. 11a) than upon the earlier assignments of them (R. 10a). As in the case of the cash surrender values at the time of the assignments, the assignees prior to, and irrespective of, the decedent's death had the absolute and sole one hundred percent ownership of these increases. It is equally clear, therefore, that the decedent did not retain the income from them (i) for her life or (ii) for a period not in fact ending before her death.

(c) *The Cash Surrender Values, Moreover, Produced Their Own Income—the Insurance Dividends—Which Belonged to the Assignees.*

One other very important factor not to be ignored is that the assignees' segment of the investments produced its own "income" to which the assignees alone were entitled and which the decedent had not retained for her life. This "income" consisted of the insurance dividends (Exs. A, B, C; R. 9a, and 25-70).

3. The Annuity Payments Retained by Decedent Were, in Any Event, Not Income From That Part of the Investment Represented by the Cash Surrender Values.

For the statute to apply, the decedent must have retained *the income* from the transferred property for her life or for a period not in fact ending before her death. The annuity payments did not have their source in, and were not income from, the cash surrender values of the life insurance policies. As already noted, they would have been unaffected if the cash surrender amounts had been paid out by the in-

surance companies upon surrender of the life policies (R. 6a). It is also unrealistic to view the cash-surrender-value part of the investments as the source of the annuities. Had the insurance companies so regarded them, they would have been foolhardy to say the least, knowing full well that these parts—constituting over 75% of each investment—could have been taken from them at any time at the "say so" of the assignees.

Cashing in the life policies would have been very different from the situation where a remainderman of a trust sells his remainder interest. In the trust where the decedent retains the income for life, the trust corpus remains immovable in the trustee's hands as the generating source of the retained income. Neither the remainderman nor the new purchaser of the remainder interest can obtain possession of such corpus until the trust ends. The opposite is true here, for the assignees could have removed from the insurance companies' hands the cash surrender values and yet the annuity payments—the alleged income—would have continued unchanged.

4. The Estate Tax Is Designed to Tax Shifting of Economic Interests at Death. There Was No Shift at Decedent's Death of the Cash Surrender Amounts Theretofore Owned in Toto by the Assignees and There Is No More Reason to Tax Them Than an Outright Lifetime Gift of Cash.

The scope and purview of the Federal estate tax is illustrated in *Coolidge v. Long*, 282 U. S. 582, 606 (1931), where Mr. Justice Roberts in his dissenting opinion sketched the theory of the Federal estate tax and compared it with an inheritance tax. At page 609 he stated:

> "The one is collected on the transfer of his estate by a decedent; *it taxes* not that to which some person succeeds upon a death, *but that which ceased by reason of death* . . . . The other is laid on the right to become beneficially entitled to property on the death of its former owner." (Emphasis added)

Similarly in *Young Men's Christian Association of Columbus, Ohio v. Davis*, 264 U. S. 47, 50 (1924), Mr. Chief Justice Taft stated:

> "What was being imposed here was an excise upon the transfer of an estate upon death of the owner. It was not a tax upon succession and receipt of benefits under the law or the will. It was death duties as distinguished from a legacy or succession tax. *What this law taxes is not the interest to which the legatees and devisees succeeded on death, but the interest which ceased by reason of the death.*" (Emphasis added).

In so far as the cash surrender amounts are concerned, nothing ceased at the decedent's death and nothing then passed to the assignees. No part thereof was in suspense until her death, and her death brought about no economic shift of these amounts. There is no more reason for taxing them, under Section 811(c)(1)(B), than for taxing outright lifetime gifts of cash to the assignees. Properly speaking, neither of these amounts is includible in a decedent's gross estate under that section.

There has been much confusion in the cases on the question presented here, as witnessed by the decisions in *Bohnen v. Harrison*, 199 F. 2d 492 (C. A. 7, 1952), affirmed *per curiam* by this Court in a four-to-four decision, Justice Jackson not participating, 345 U. S. 946 (1953), rehearing denied 345 U. S. 978 (1953); *Estate of Burr et al. v. Commissioner*, 156 F. 2d 871 (C. A. 2, 1946), certiorari denied 329 U. S. 785 (1946); *Conway v. Glenn*, 193 F. 2d 965 (C. A. 6, 1952); *Estate of Reynolds v. Commissioner*, 45 B. T. A. 44 (1941). This has been caused, it is submitted, by the failure to break down the "insurance" part of the investment into its segments, namely, (a) the cash surrender amount[5] which the assignees wholly owned during the decedent's life (and which in any event did not produce

5. This cash surrender amount was $180,404 in the case of life policy No. 4842239.

the annuity income) and (b) the excess of the full insurance proceeds over the cash surrender amount,[6] which excess first passed to the assignees upon decedent's death.

THE PART OF THE INVESTMENT REPRESENTED BY THE BALANCE OF THE INSURANCE PROCEEDS.

5. The Amount by Which the Insurance Proceeds Exceeded the Cash Surrender Values Prior to Death Is Not Includible in Decedent's Gross Estate Under Section 811(c)(1)(B).

Up to this point petitioners' argument has related to the non-taxability of that part of decedent's investments represented by the cash surrender values of the life insurance policies. Still to be discussed is the question whether the excess of the full insurance proceeds over the prior-to-death cash surrender values is includible in decedent's gross estate. The District Court in this case, following the Court of Appeals for the Seventh Circuit in *Bohnen v. Harrison*, 199 F. 2d 492 (1952), affirmed *per curiam* in a four-to-four decision, 345 U. S. 946, rehearing denied, 345 U. S. 972 (1953), correctly held, it is submitted, that none of the insurance proceeds was includible in the decedent's gross estate (R. 13a-22a). In the *Bohnen* case it was stated (at p. 493):

> "* * * The annuities were not based upon and in no wise dependent upon any consideration given for the life policy. The money to be paid under the life contract was in no wise based or dependent upon the sum advanced to secure the annuities. The two contracts constituted independent units, two pieces of property. Consequently, when the insured immediately transferred and assigned all of her right, title and interest of every character in and to the policy of

6. This excess was $13,616 for life policy No. 4842239, the full death proceeds of which were $200,020.

insurance, that unit of her estate passed to the assignees, and was no longer her property. It could, therefore, under no conception, constitute a part of her taxable estate when she died thereafter."

The "insurance" here is somewhat analogous to one of those government bonds which are sold at a discount and which attains its face value by the accumulation of interest for twelve years. Had this decedent given one of her children a $1,000 bond which at the time of the gift could have been cashed for only $900, the gift of the entire bond would have been complete. If the donee chose to sacrifice the extra $100 for the sake of obtaining at once the $900, that would have been his privilege. Had he awaited the expiration of the twelve year period in order to obtain the full face value of the bond, that again was his privilege. But from the moment of the gift, that extra $100 belonged to him—either to sacrifice or to await realization as he chose. It would be false to say that the decedent retained for life the income from the $900, since to the contrary the child completely owned the $900 at the time of the gift and was then entitled—and had a legal right—to whatever that money produced. For like reasons, it would be equally false to say that the decedent retained for life the income from such annual increases in the bond as took place prior to its maturity.

The final amount to which the child would become entitled upon maturity of the government bond might be likened to the final amount of "insurance" the children actually became entitled to upon maturity of the life policies, that is, the excess over the cash surrender values just before death. We maintain that the decedent did not retain for life the income from such excess. She had assigned during her life the entire insurance policy and all that went with it. Moreover, she could have purchased the identical annuity contracts—to produce the same annuity income—without purchasing any insurance at all.

6. The Decision of the Court of Appeals Below Is Wrong and Does Not Reach or Answer the Issue in Controversy.

Some of the language in the opinion of the Court of Appeals in this case is confusing and misleading. It might lead to the erroneous belief that the assignees' right to cash in the life policies was limited or that their use of any cash so obtained was not subject to present enjoyment. There is no warrant anywhere in the record for such an implication. Under the assignments the assignees had the absolute right to cash in the life policies (Exs. A, B, C; R. 6a-8a, 25-70). The trustee alone was the only assignee whose use of cash so received was in any way limited, and it would have been obliged to hold such cash pursuant to the terms of the trust (Exs. G, H; R. 71-78) under which the children were the primary income beneficiaries (Ex. G; R. 71-76) and in which the decedent, after July 6, 1938, had no beneficial or reversionary interest (R. 8a).

There are three particularly misleading statements in the opinion of the Court of Appeals. First, the Court stated (R. 85):

> "By July 6, 1938, decedent had assigned irrevocably and unalterably to the beneficiaries all her rights in all death payments."

Although this statement is correct in so far as it goes, the Court failed to state elsewhere that in addition the decedent had assigned all her rights not alone to the death proceeds but also to all life payments, under the insurance, that is, the lifetime cash surrender values plus lifetime dividends on the insurance. Second, the Court next stated (R. 88):

> "In the first place it does not appear that the beneficiaries received anything substantial since they were all contingent beneficiaries and survivorship was unknowable until the death of the decedent. While,

> theoretically, there may have been a possibility of anticipating the death payment by a cash surrender, the anticipators could do nothing with the cash until the survivorship status was determined."

In the light of the uncontroverted facts, none of these statements is factually correct. The Court confused the named beneficiaries of the policies with the assignees of the policies. The assignees received very substantial present rights pursuant to the assignments, namely, among others, the unqualified right to receive at any time the very substantial cash surrender values. As previously noted, there is no warrant in the record for any implication that the assignees'—except the trustee's—use of any cash so obtained was restricted. Third, the Court further stated (R. 89):

> "* * * the shifting of the economic benefits of the investment occasioned by the death of the decedent is too much akin to a testamentary disposition not to be subjected to * * * tax under Sec. 811(c)(1)(B)."

The truth is to the very contrary. The decedent's death caused no shift of economic benefits whatever, in regard to that segment of the investments represented by the prior-to-death cash surrender values of the three life insurance policies.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

ROBERT T. MCCRACKEN,
JOHN B. LEAKE,
Counsel for Petitioners.

October 14, 1957.

APPENDIX.

STATUTE AND REGULATIONS INVOLVED.

Internal Revenue Code of 1939.

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * *

(c) [as amended by Section 7(a) of the Act of October 25, 1949, c. 720, 63 Stat. 891] *Transfers in Contemplation of, or Taking Effect at, Death*—

(1) *General Rule.*—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

* * *

(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom;

* * *

(26 U. S. C. 1946 ed., Supp. III, Sec. 811.)

Treasury Regulations 105.

Sec. 81.18 [as amended by T. D. 5834, 1951-1 Cum. Bull. 72]. *Transfers with possession or enjoyment retained.* (a) *General Rule.*—Except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, section 811(c)(1)(B) requires the inclusion in the gross estate of the value of all property transferred by the decedent, whether in trust or otherwise, if the decedent retained or reserved the use, possession, right to the income, or other enjoyment of the transferred property (1) for his life; or (2) for any period not ascertainable without reference to his death; or (3) for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period. Except as provided in paragraph (b) of this section, such property is includible without regard to the date when the transfer was made, whether before or after the enactment of the Revenue Act of 1916.

(b) *Estate of decedents dying before January 1, 1950.* In the case of a decedent who died before January 1, 1950, property shall not be included in the gross estate under this section unless transferred—

(1) after March 3, 1931, and before June 7, 1932, and the retention or reservation by the decedent was (A) for his life or (B) for such a period as to evidence his intention that it should extend at least for the duration of his life, and his death occurs before the expiration of such period; or

(2) on or after June 7, 1932.

* * *

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IN THE

Supreme Court of the United States

October Term, 1957.

No. 130.

FIDELITY-PHILADELPHIA TRUST COMPANY
and
ROBERT B. HAINES, III,
Executors of the Will of Mary H. Haines, Deceased,
Petitioners,

v.

FRANCIS R. SMITH,
Collector of Internal Revenue,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Reply Brief for the Petitioners.

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EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED,
Petitioners,

v.

FRANCIS R. SMITH,
COLLECTOR OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

REPLY BRIEF FOR THE PETITIONERS.

RESPONDENT MISCONSTRUES PETITIONERS' ARGUMENT AND OBSCURES THE ISSUE.

1. Respondent Misconstrues Petitioners' Argument.

At page 8 of respondent's brief it is stated:

"Taxpayers' argument rests entirely on the premise, rejected by this Court in *LeGierse*, that a single purchase of a combined insurance-annuity contract of the kind here involved is to be viewed for estate tax pur-

> poses as if it constituted two separate and unrelated investments."

Again, at page 26 respondent's brief states:

> "Taxpayer's entire argument proceeds on the hypothesis, repudiated by this Court in *LeGierse* and *Goldstone*, that decedent's conjoined insurance-annuity purchase is to be treated as two separate and unrelated purchases, and that the total premium should be allocated as between the insurance and annuity features."

Quite to the contrary, petitioners concede—and believe this is clear in their main brief—that Mrs. Haines' purchase of each life insurance policy and annuity contract [1] constituted a single investment. However, it cannot be denied that the investment once made was thereafter divisible and, in fact, was divided when Mrs. Haines assigned the life policies (R. 6a-8a).

2. Respondent's Brief Obscures the Issue.

To focus on the issue it seems best to put two questions. Both must be answered affirmatively, if the opinion below is to be sustained. First, did the annuity constitute *income* from that part of the investment represented by the cash surrender value of the life policy? Second, how could Mrs. Haines have *retained* for the statutory life period,[2] *i.e.*, had a legal right to, the income from such cash surrender value when such cash surrender value was *wholly* owned by the assignees while she was alive? Petitioners contend both questions require a negative answer and, therefore, that Section 811(c)(1)(B) is not applicable to this part of the investment.

---

1. Although decedent purchased three life insurance policies and three annuity contracts, in the interest of simplicity this brief on occasions will refer to the transactions as though there were a purchase of one life insurance policy and one annuity contract.

2. That is, for her life or for any period which did not in fact end before her death. I. R. C. of 1939, Sec. 811(c)(1)(B).

Respondent's brief omits two facts bearing on the first question, namely, that (1) Mrs. Haines, or anyone her age, could have purchased the very same annuity contracts at the prices Mrs. Haines paid for them without buying any life insurance at all (R. 5a); and, even more important, (2) if the assignees of the life insurance policies had cashed them in—as they had every right to do—the annuities would have continued undiminished until Mrs. Haines' death (R. 6a). How in these circumstances, petitioners ask, can the annuities be considered income from these cash surrender amounts which might have disappeared, leaving the annuities unchanged?

As to the second question, Mrs. Haines assigned the life policies many years before she died (R. 3a-8a). The assignments in reality effected two gifts: (1) a present and unqualified right in the assignees to enjoy *at the time of assignment* that part of the investment consisting of the cash surrender values;[3] and (2) a second conditional right, to be *enjoyable in the future* at Mrs. Haines' death, to receive the excess of the face amount of the insurance over the prior-to-death cash surrender values, provided the assignees did not cash in the policies during Mrs. Haines' life. Since the first gift belonged in its entirety to the assignees during Mrs. Haines' life, it is at variance with the facts to say that she had a retained income interest in it.

Respondent argues to the contrary. But, as noted, he ignores critical facts and there is a conspicuous gap in his argument. He altogether shuns discussion of the statutory word "retained" notwithstanding that its meaning is critical here. Obviously, the word "retained" in the statute (Section 811(c)(1)(B)) means retained in the sense of having a legal right to the income. To read it otherwise would make a travesty of the statute. It would be preposterous to say that a father who gave $10,000 cash outright

3. This gift was augmented during Mrs. Haines' life by the annual increases in the cash surrender values up to the amount of them just before her death (R. 10a-11a, 27, 40, 54).

to his daughter "retained" the income from such cash. It would be equally preposterous to say that Mrs. Haines *retained* the income from the original cash surrender amounts.[4]

If the assignees had surrendered the life policies—as they had every right to do (R. 6a-8a, 27, 40, 54, 77)—and invested the cash in stocks, dividend income therefrom would have been theirs. Even respondent, it is believed, would not claim that Mrs. Haines retained any legal or other right to this dividend income. Did the assignees' failure to take their cash[5] alter the situation so that, by some legerdemain, Mrs. Haines then had retained—legally owned—the income from such cash? Of course not. All such income was owned by the assignees and none was *retained* by Mrs. Haines. Such income consisted of the dividends on the life policies and also, it is submitted, is reflected in the annual increases in the cash surrender values (R. 27, 40, 54).[6]

The lower courts sustain petitioners' view. They hold that, for the purposes of Section 811(c), a decedent has "retained" the income from transferred property if, *and only if*, he has an enforceable legal right to it. In *Estate of Louis Richards v. Commissioner*, 20 T. C. 904 (1953) affirmed *per curiam* 221 F. 2d 808 (C. A. 9, 1955), a trustee of an irrevocable trust permitted the settlor to receive the trust income. For this reason the Commissioner of Internal Revenue argued that the trust corpus was includible in the settlor's gross estate as a transfer in respect of which he had retained the income for life. The Tax Court disagreed since the decedent had no legal right to the trust income, saying (at page 916):

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4. And it is also wrong to say that Mrs. Haines *retained*, for the statutory life period, the income from the increases in the cash surrender values since these increases belonged in their entirety to the assignees while Mrs. Haines was alive.

5. By surrendering the policy.

6. The record shows that in the case of two of the life policies the dividends were paid to the decedent's children or at their direction (R. 9a). Also, from year to year, the annual increases in the cash surrender values belonged to the assignees.

> "We accordingly see no ground for the application of section 811(c)(1)(B) * * *. It is argued by respondent that the decedent exercised the right to take income from the trust corpus. It is unquestionably true that the decedent did take such income, but *we fail to find a right on his part to do so. This result was not brought about through an exercise of a legal right on his part* but directly as a result of a failure on the part of the trustee to exercise its responsibilities as such." (Emphasis added.)

In *Burr Estate v. Commissioner*, 4 T. C. M. 1054 (1945), affirmed on another point 156 F. 2d 871 (C. A. 2, 1946) certiorari denied 329 U. S. 785 (1946), the decedent bought a house and gave it to his wife. They used it as a summer place. The Commissioner sought to include the value of the house in the decedent's estate under Section 811(c) on the theory he had retained the possession and enjoyment of it until his death. The court held the property *not* includible saying:

> "It is true that the decedent and his wife used the property as a summer home and to that extent he enjoyed the premises. The gifts were complete and after they were made, the donee had title to the real property and chattels. *The decedent retained no interest of any kind in the property and such enjoyment as he had of his gifts was at the sufferance of his wife and not because of any rights he possessed in the property.*" (Emphasis added.)

Here, even if it could be said that the decedent enjoyed "income" from the cash surrender values—which petitioners vigorously deny—it was only at the sufferance of the assignees and not because of any right she had retained and possessed in the property.

Respondent's brief (at page 21) states that the insurance part of the investment would escape estate tax unless it is taxed under Section 811(c)(1)(B). Plainly,

this is a very poor argument for asserting that the statute applies. Does the respondent intend by this that *every inter vivos* gift of property which has been subject to gift tax, and which is complete and unequivocal, also be subject to estate tax? There is no more reason for taxing a gift of the cash surrender values than an outright present gift of cash.

Respondent's argument that the entire investments—including the cash surrender values—are subject to estate tax in the decedent's estate, is further predicated on these points:

(1) The assignees did not surrender the policies (Br. p. 22).[7] Does it follow from this—as required by the statute—that Mrs. Haines *retained* an enforceable legal right to the income from the cash surrender amounts? Obviously, not.

(2) The respondent then states since the insurance was not cashed in that a "complete answer" is found here in the statutory provision requiring inclusion of the gift property if the decedent retained the income therefrom for "any period which does not in fact end before his death" (Br. p. 25). This statement offends all common sense. It first assumes that the annuity was income from the entire investment—including the cash surrender values—which is just not so. Second, how in any event could Mrs. Haines be said to have *retained* the "income" from these cash surrender amounts when (a) these amounts were *wholly* owned by the assignees, and (b) that being so, also whatever they produced as income?

(3) The respondent (Br. p. 17) likens the transaction to a deposit of a principal sum with a guaranteed

7. It is interesting to note that in a like case where the assignees actually surrendered the insurance policies during the decedent's life, the Tax Court held the insurance not includable in the decedent's gross estate. *Estate of Lillie G. Hutchinson v. Commissioner*, 20 T. C. 749 (1953).

return of approximately 2.5 percent and a guaranteed payment of principal. This statement is misleading and specious. It utterly fails, like respondent's other arguments, to address itself to the real statutory requirements.

(4) The respondent states (Br. p. 22) that Mrs. Haines' manifest intention was to make a gift at her death of the face amount of the insurance. Once again, this does not answer the statutory question whether she retained a legal right to the income from all the investment for the statutory life period.[8] Concededly, because of the loading charges and expenses, at the outset there would have been a loss if the assignees had cashed in the insurance policies, because at that time the cash surrender values were smaller than the insurance premiums, although the reverse was true prior to the decedent's death (R. 4a-5a, 11a).

Respondent's argument is irrelevant anyway. The statute is *not* based on whether the decedent intended the gift to take effect at her death or not. Another entirely different statute covers that situation, Section 811(c)(1)(C), and that Section is not applicable here.[9]

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8. The respondent misstates the facts (Br. p. 23) where it is said: "It is completely unrealistic to assume, as taxpayers do (Br. 9), that the decedent invested $384,000 to assure her beneficiaries of a cash surrender value of $289,324 in 1934, or $300,620 in 1938, or even $326,249 in 1946". Petitioners assumed no such thing. The investment of $384,000 did two things: (1) it assured the decedent of a fixed annuity for life, which the Government omits to state, as well as (2) assuring the donees of at least a certain part of the investment.

9. Section 811(c)(1)(C) of the 1939 Internal Revenue Code is *not* applicable. Mrs. Haines transferred the insurance before October 7, 1949. Section 811(c)(2) provides that even in the case of a transfer intended to take effect at or after death, if it was made before October 7, 1949, it is not includable in the decedent's gross estate unless he retained an express reversionary interest in the property, having a value immediately before his death of more than 5% of the property. Mrs. Haines did not retain any express reversionary interest in the property.

It is significant also that under the Internal Revenue Code of 1954, none of the property would be included in Mrs. Haines' gross

The controlling language of Section 811(c)(1)(B) is plain and unambiguous. It hangs on whether the decedent made a transfer "under which he has retained for his life * * * or for any period which does not in fact end before his death * * * the right to the income from the [transferred] property * * *." The words "intent" or "intend" appear nowhere in the statute. The decedent's state of mind has nothing to do with it.

Moreover, it seems clearly erroneous to say that Mrs. Haines intended *not* to make a present lifetime gift of the cash surrender values. The only reasonable assumption is that she made the assignments intending to accomplish what in fact was accomplished, giving the assignees the present right to the cash surrender amounts. Had her intent been otherwise the normal thing to do would have been merely to name the assignees as beneficiaries of the policies and *not* assign the policies to them outright.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

ROBERT T. MCCRACKEN,
JOHN B. LEAKE,
Counsel for Petitioners.

January 8, 1958.

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estate as a transfer taking effect at death under Section 2037. In order to constitute such a transfer under Section 2037 two conditions are essential: (1) possession or enjoyment must be obtainable by the beneficiaries *only* by surviving the decedent—that would *not* be the case here with respect to the cash surrender values; (2) the decedent must have retained an express reversionary interest in the property exceeding 5% of its value. As noted, the decedent retained no such reversionary interest. In speaking of the 1954 Code it is also noteworthy that the decedent's payment of the life insurance premiums would not be a ground for including the insurance in her gross estate as insurance. I. R. C. of 1954, Sec. 2042.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED, PETITIONERS

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 1008

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED, PETITIONERS

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The question presented is whether death payments under contracts between the decedent and life insurance companies in the circumstances described below should be included in the decedent's gross estate as transfers of property with respect to which she has retained for her life the enjoyment of the income, under Section 811 (c) (1) (B) of the Internal Revenue Code of 1939, as amended by Section 7 (a) of the Act of October 25, 1949, c. 720, 63 Stat. 891 (26 U. S. C. 1952 ed., Sec. 811). At the age of seventy-six the decedent purchased three single premium life insurance policies without being required to take a

medical examination, upon the condition that she would purchase an annuity contract in connection with each life insurance policy in such an amount that the aggregate of the life insurance and the annuity premiums in each instance would be equal to 11/10ths of the face amount of the life insurance policy. She purchased the annuity contracts in the prescribed amounts. During her lifetime she assigned the so-called life insurance policies to her children without consideration. The decedent received the "annuity payments" until her death, at which time the proceeds of the "life insurance policies" were paid to her children.

This case presents the same question that was involved in *Bohnen* v. *Harrison*, 199 F. 2d 492 (C. A. 7th), affirmed by an equal division of this Court, 345 U. S. 946, rehearing denied, 345 U. S. 978, and is in direct conflict with the decision in that case.[1] Although the case arose under the 1939 Internal Revenue Code, Section 2036 (a) of the 1954 Code reenacted the pertinent provision without substantial change so that the issue remains important. Accord-

[1] The subsequent decision of the Court of Appeals for the Seventh Circuit in *Greene* v. *United States*, 237 F. 2d 848, referred to by the court below as interpreting the pertinent section of the Code in a manner consistent with that followed by it, deals with facts different from those in the present case and does not purport to qualify in any way the court's earlier decision in the *Bohnen* case.

ingly, although the Government believes that the decision below is correct,[2] it does not oppose the issuance of a writ of certiorari in this case.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

JUNE 1957.

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[2] The following cases are in accord with the decision below. *Estate of Reynolds* v. *Commissioner*, 45 B. T. A. 44; *Burr* v. *Commissioner*, 156 F. 2d 871 (C. A. 2d), certiorari denied, 329 U. S. 785; *Conway* v. *Glenn*, 193 F. 2d 965 (C. A. 6th).

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v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 130

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v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court (R. 13a-22a) is reported at 142 F. Supp. 561. The opinion of the Court of Appeals (R. 84-89) is reported at 241 F. 2d 690.

JURISDICTION

The judgment of the Court of Appeals was entered on February 28, 1957. (R. 90.) A timely petition for rehearing was denied on March 15, 1957. (R. 90-91.) The petition for a writ of certiorari was filed on May 17, 1957, and was granted on June 17, 1957. (R. 91.)

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

In 1934, the decedent arranged to make contemporaneous purchases of three single-premium life insurance policies and three single-premium annuity contracts. The life insurance policies, which were issued without medical examination, would not have been issued to the decedent without the accompanying annuity contracts. The premiums for each life insurance policy and its accompanying annuity contract totalled approximately 11/10ths of the face amount of the life insurance policy. The decedent assigned two of the policies to her children and one to the trustee of a trust established by her. She received annuity payments under the contracts until her death.

The question is whether the death proceeds of the life insurance policies were includible in the decedent's gross estate under Section 811(c)(1)(B) of the Internal Revenue Code of 1939 as property transferred in which she retained the right to the income for her life or for a period which did not in fact end before her death.

STATUTE INVOLVED

Internal Revenue Code of 1939:

> SEC. 811. GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—
>
> * * *

(c) [as amended by Sec. 7 (a) of the Act of October 25, 1949, c. 720, 63 Stat. 891] *Transfers in Contemplation of, or Taking Effect at, Death*—

(1) *General Rule.*—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

* * *

(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

* * *

(26 U.S.C. 1952 ed., Sec. 811.)

STATEMENT

The District Court's findings (R. 3a-13a), which were based upon the pleadings and stipulations of the parties (R. 3a), may be summarized as follows:

In 1934, the decedent, then aged 76, purchased three single-premium life insurance policies aggregating $350,000 in face value: two from the Mutual Life Insurance Company of New York in the face amounts of $200,000 and $100,000, and one from the John Hancock Mutual Life Insurance Company in the face amount of $50,000. On the date of purchase of each insurance policy, the decedent also purchased single-premium, non-refundable annuity contracts from these

companies providing for annual annuities of $5,026, $2,440.64, and $1,295.56, respectively. The total premiums paid for the three insurance policies, together with the three accompanying annuity contracts, were $220,000, $110,000 and $54,000, respectively. (R. 4a-6a.) The life insurance policies were issued without medical examination, and they would not have been issued without the purchase of the annuity contracts; in fact, the companies required, in order to protect themselves in the event that the decedent died shortly after purchasing the policies, that the aggregate premiums for each life insurance policy and accompanying annuity contract should be 11/10ths of the face amount of the insurance policy.[1] (R. 6a, 11a-12a.) In each instance, the premium for the life insurance policy was fixed at regular insurance rates, and the balance of premium required to bring the total payment to 11/10ths of the face amount of the policy was determined by the company as the amount to be used to purchase an annuity contract (R. 11a-12a.)[2]

The decedent's four children were named primary beneficiaries of each insurance policy and Fidelity-Philadelphia Trust Company, as trustee under a trust established by decedent, was named contingent beneficiary of the share of any of decedent's children who predeceased her. (R. 6a-7a.) At the time of issuance

[1] Under this formula, the total premiums for the John Hancock policy and annuity contract should have been $55,000 instead of $54,000. This discrepancy is of no material significance to the issue.

[2] The District Court's general finding that the annuity contracts and payments were in no way dependent on the consideration paid for the contemporaneously issued insurance contracts (R. 5a) is to be read in conjunction with its specific findings relating to the interdependence of the contracts (R. 6a) and the method of computing and apportioning the aggregate premiums (R. 11a-12a).

of the two Mutual Life Insurance Company policies, all rights and benefits thereunder were assigned to decedent's children, to whom the dividends were paid. In 1934, the decedent assigned the John Hancock policy to Fidelity-Philadelphia Trust Company, as trustee; by an amendment to the trust agreement, dated July 6, 1938, this trust became irrevocable and the decedent retained no beneficial or reversionary interest in the trust. (R. 6a-9a.) In 1935, the decedent paid a gift tax on the transfer of the insurance policies. (R. 8a.) The policies provided for payment of designated cash surrender values, if they were surrendered. They were never in fact surrendered. (R. 9a-11a.)

The decedent died on May 7, 1946. The death proceeds of the three life insurance policies were not included in her gross estate in the estate tax return filed by her executors. The Commissioner determined a deficiency of approximately $97,000, plus interest, on the ground that the proceeds of the policies should have been included. (R. 3a-4a.) This deficiency was paid by the executors, and they subsequently filed a claim for refund which was denied. This action for refund followed. (R. 4a.) The District Court entered judgment for the taxpayers, holding that the insurance and annuity contracts were separate contracts, and that the decedent made no transfer which fell within the purview of Section 811(c)(1)(B) of the Internal Revenue Code of 1939, *supra*, pp. 2-3. (R. 13a-22a.)

The Court of Appeals reversed, holding that in substance, if not in form, the life insurance policies and annuity contracts were interdependent; that the transaction was almost identical to a transfer in trust with a life interest reserved to the settlor; and that the shifting of economic benefits on the death of the de-

cedent was akin to a testamentary disposition of the type taxable under Section 811(c)(1)(B) of the Internal Revenue Code of 1939. (R. 84-89.)

SUMMARY OF ARGUMENT

Section 811(c)(1)(B) of the Internal Revenue Code of 1939 requires, for estate tax purposes, inclusion in a decedent's gross estate of any property transferred *inter vivos* if the decedent retained a right to the income for life or for any period which did not in fact end before his death.

The decedent here, at an advanced age, purchased single-premium life insurance policies which were issued on condition that she also purchase single-premium, non-refundable annuity contracts. The premium for each insurance policy was charged at regular rates, but the premium for each annuity was fixed in such amount that, when added to the life insurance premium, the total equalled 11/10ths of the face amount of the insurance policy. Although the insurance policies and annuity contracts were separate in form, in substance they were interdependent. Each policy and each accompanying annuity contract jointly constituted a single investment transaction. This Court has previously held, in determining that such a transaction does not constitute true insurance, that the companion contracts must be considered together since the source of the "insurance" payment due on the death of the decedent is the total of the premiums paid on the two contracts. *Helvering* v. *LeGierse,* 312 U.S. 531. Each combined insurance-annuity transaction must be deemed as fully integrated as if it had been embodied in a single document.

Once it is recognized that the insurance policy and related annuity contract are integral parts of a single investment transaction, the substance and the tax effect of the arrangement become clear. The decedent invested a fund (aggregate premium) with the insurance companies and was entitled to receive a stipulated annual income therefrom (the "annuity" payments) for her life, with the principal (the "insurance" proceeds) payable to her beneficiaries at her death. The "insurance" paid at decedent's death to her beneficiaries represented nothing more than the principal amount of the premiums transferred to the insurance companies, while the "annuity" she received during her lifetime represented interest earned on that principal. Such an arrangement is the same, for all practical purposes, as a transfer in trust with income reserved to the settlor for life and the remainder payable to the beneficiaries, and is therefore a testamentary disposition falling within the purview of Section 811 (c)(1)(B). The fact that the insurance policies were assigned by the decedent during her lifetime does not affect either the unity or the essential nature of the transactions. A life tenant commonly has no ownership rights in the remainder which follows the life estate; nor is the statute aimed at a retention of such rights. It is the reservation of income for life from property which will come into possession of the beneficiaries upon the decedent's death which renders the property includible in the gross estate.

The fact that the decedent's assignees could have obtained a portion of the principal amount of the premiums transferred, by surrendering the insurance policies during her lifetime, is not significant. The insurance policies were never in fact surrendered, nor

was it intended that they should be. If the decedent had intended an immediately effective gift, she hardly would have made it in a form which would have required the taking of a substantial loss. Her manifest purpose was that her children should be paid the principal amount on her death, and that, in the meantime, she would receive a stipulated income for life. In any event, under the statute, the property is includible in the gross estate if the decedent retains the income for a period which does not in fact end before her death. The decedent did in fact retain the income for such period and the unexercised power of her assignees to surrender the policies does not alter either the realities or the tax effect of the transaction.

Taxpayers' argument rests entirely on the premise, rejected by this Court in *LeGierse*, that a single purchase of a combined insurance-annuity contract of the kind here involved is to be viewed for estate tax purposes as if it constituted two separate and unrelated investments. To subscribe to taxpayers' argument would exalt artifice above reality and open a wide avenue to estate tax avoidance. The congressional mandate in Section 811(c)(1)(B)—that property transferred with a life income retained must be treated as part of the transferor's taxable estate—could be readily circumvented simply by casting the transfer in the form of a premium payment for combination insurance-annuity contracts, under which income from the investment would inure to the benefit of the transferor during his lifetime by way of an "annuity", while the principal amount would be payable to the natural objects of his bounty upon his death by way of "insurance".

ARGUMENT

THE PURCHASE OF A SINGLE-PREMIUM INSURANCE POLICY AND AN ACCOMPANYING NON-REFUNDABLE ANNUITY CONTRACT WAS A SINGLE INVESTMENT TRANSACTION WHEREBY DECEDENT RESERVED THE INCOME FROM HER CAPITAL FOR LIFE WITH THE PRINCIPAL PAYABLE TO HER BENEFICIARIES AT DEATH, AND HENCE WAS A TRANSFER OF PROPERTY INCLUDIBLE IN DECEDENT'S GROSS ESTATE UNDER 1939 CODE SECTION 811(c)(1)(B)

Section 811(c)(1)(B), Internal Revenue Code of 1939, *supra*, p. 2,[3] requires that there be included in the gross estate of a decedent, subject to estate tax, the value of all property to the extent of any "interest therein of which the decedent has at any time made a transfer * * * by trust or otherwise * * * under which he has retained for his life * * * or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property * * *."[4]

The issue here is whether the decedent made transfers of the kind described in Section 811(c)(1)(B) when she purchased, in combination, single-premium, non-refundable annuity contracts and single-premium life insurance policies (the latter issued without medical examination and only on condition that the annuity

[3] As amended by Section 7(a), Act of October 25, 1949, c. 720, 63 Stat. 891. Section 7(b) of that Act made the provisions of Section 7(a) applicable to estates of decedents dying after February 10, 1939.

[4] In Section 2036 of the Internal Revenue Code of 1954 (26 U.S.C. 1952 ed., Supp. IV, Sec. 2036), this provision has been reenacted without substantial change. H. Rep. No. 1337, 83d Cong., 2d Sess., p. A314 S. Rep. No. 1622, 83d Cong., 2d Sess., p. 469.

contracts be purchased) pursuant to which she received stipulated annual payments for her life and her children received the principal amounts payable upon her death.[5]

The Court of Appeals, sustaining the Government's position, correctly held that the combined insurance-annuity contract purchase constituted a single investment, in which the decedent reserved the income to herself for life and gave her children the principal, payable at her death. Such transfers fall squarely within the language and scope of Section 811(c)(1)(B). *Conway* v. *Glenn*, 193 F. 2d 965 (C.A. 6th); *Burr* v. *Commissioner*, 156 F. 2d 871 (C.A. 2d), certiorari denied, 329 U.S. 785; *Estate of Reynolds* v. *Commissioner*, 45 B.T.A. 44. Cf. *Bank of New York* v. *Kelly*, 135 N.J. Eq. 418; *Day* v. *Walsh*, 132 Conn. 5 (decided under similar provisions of state tax laws). See, also, *In re Smiley's Estate*, 35 Wash. 2d 863, 868. Contra: *Bohnen* v. *Harrison*, 199 F. 2d 492 (C.A. 7th), affirmed by an equally divided Court, 345 U.S. 946.

A. The Insurance-Annuity Purchase Was a Single Investment Transaction

In determining the applicability of Section 811(c)(1)(B) to the facts of this case, inquiry must first be directed to the essential nature of the transaction between the decedent and the insurance companies. Al-

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[5] Since the issue is the same with respect to each of the transactions in which decedent purchased an insurance policy in conjunction with an annuity contract, this brief, for the sake of convenience, will frequently refer to the transactions as if there were one set rather than three.

though in form there was a separate life insurance policy and a separate annuity contract in each instance, in substance the insurance policy and the annuity contract were interdependent and formed integral parts of a single transaction. It is not accurate to assert, as taxpayers do, that the life insurance and annuity contracts are separate because separate in form or because the annuity contract could have been purchased without the life insurance. This assertion completely ignores the circumstance that the insurance policy, issued without medical examination, could not have been purchased without the contemporaneous purchase of the annuity contract at premiums calculated in such amount as to make the total premiums for the life insurance policy and its accompanying annuity contract equal to 11 10ths of the face amount of the insurance policy. (R. 11a-12a.) In fact, therefore, the insurance and annuity contracts were interdependent and their purchase in combination was a single investment with income reserved to the decedent for life and the principal payable to her children at her death.

This Court has determined, as a matter of law, that transactions of this type represent a single investment, rather than separate contracts of insurance and annuity, under the provisions of the predecessor of Section 811(g) of the 1939 Code. *Helvering* v. *LeGierse*, 312 U.S. 531; *Estate of Keller* v. *Commissioner*, 312 U.S. 543; *Tyler* v. *Helvering*, 312 U.S. 657. See Meisenholder, *Taxation of Annuity Contracts Under Estate and Inheritance Taxes*, 39 Mich. L. Rev. 856, 883-887 (1941). The same view has been adopted in the administration of state inheritance tax laws. *Bank*

of New York v. *Kelly*, 135 N.J. Eq. 418; *Day* v. *Walsh*, 132 Conn. 5; *In re Smiley's Estate*, 35 Wash. 2d 863. This principle was adopted as the underlying basis for the decisions in *Goldstone* v. *United States*, 325 U.S. 687, 690, and *United States* v. *Tonkin*, 150 F. 2d 531, 535 (C.A. 3d), certiorari denied, 326 U.S. 771.[6]

In *Helvering* v. *LeGierse*, *supra*, this Court concluded that the single-premium life insurance policy was not true "insurance" under Section 811(g) of the 1939 Code because there was no distribution of the risk of premature death among the policyholders. And that was so because the company, by requiring the contemporaneous purchase of a non-refundable annuity contract, always held a fund (consisting of the two premiums) at least equal to the face amount of the policy payable whenever death occurred. The Court stated (p. 542):

> Here the total consideration was prepaid and exceeded the face value of the "insurance" policy. The excess financed loading and other incidental charges. Any risk that the prepayment would earn less than the amount paid to respondent as an annuity was an investment risk similar to the risk assumed by a bank; it was not an insurance risk as explained above. * * *

Although the premiums in *LeGierse* were calculated separately and the company maintained separate re-

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[6] In *Goldstone*, the Court held that the insurance proceeds were includible in the decedent's gross estate under Section 811(c)(1)(C), because of a contingent reversionary interest, and accordingly deemed it unnecessary (p. 693) to decide whether they were alternatively includible under Section 811(c)(1)(B) by reason of the decedent's retention of the income during his lifetime.

serves[7] for each contract, as was done here, the Court looked to substance and concluded that the transactions could not be separated, stating (p. 540):

> The two contracts must be considered together. To say that they are distinct transactions is to ignore actuality, for it is conceded on all sides and was found as a fact by the Board of Tax Appeals that the "insurance" policy would not have been issued without the annuity contract. Failure, even studious failure, in one contract to refer to the other cannot be controlling. * * *

Obviously, as this Court recognized, the source of the payment required by the insurance policy at death was the combined premiums paid by the decedent. The annuity represented income earned by the investment consisting of the two premiums. This Court refused to permit the separate formal attributes of the insurance policy and the annuity contract to affect its conclusion, declaring (p. 541):

> Certainly the mere presence of the customary provisions does not create risk, and the fact that the policy could have been assigned is immaterial since, no matter who held the policy and the an-

[7] The existence of separate reserves, also present in this case (R. 9a), is of no legal significance. Contrary to the popular notion, the term "reserve" does not refer to the existence of any fund to pay liabilities of insurance companies. Rather, it refers simply to the liability of the insurance company on the policies issued discounted in accordance with mortality tables providing a fixed rate of interest. The insurance companies are merely required to have total assets on hand, without division, to meet total liabilities, including reserves. Statutory reserves are computed in the same manner. Mowbray and Blanchard, *Insurance, Its Theory and Practice in the United States* (4th ed.), pp. 357-358, 362-363, 371. In this case, in the two Mutual Life Insurance Company annuity contracts, the provision for computation of reserves at four per cent was eliminated. (Exs. D, E, R. 63, 65.)

nuity, the two contracts, relating to the life of the one to whom they were originally issued, still counteracted each other.

The contracts here in question are equally inseparable and without risk. The decedent, aged 76, was enabled to purchase life insurance in the face amount of $350,000, without medical examination, only upon condition that she purchase annuity contracts which were non-refundable no matter when she died. The combined premiums for these contracts totalled $384,000 and decedent was to receive a combined annuity of $8,762.20. (R. 4a-6a.) After deducting the loading charge of $34,000,[8] the decedent was entitled to receive, in the form of an "annuity", an income of approximately 2.5 per cent on the principal payable to her children at her death.[9] As this Court stated in

[8] The loading factor is the excess of the combined premiums over the face amount of the "insurance" payable at death and is designed to compensate the company for certain overhead expenses, like premium taxes and agents' commissions. *Helvering* v. *LeGierse*, *supra*; *Commissioner* v. *Keller's Estate*, 113 F. 2d 833, 835 (C.A. 3d), affirmed, 312 U.S. 543.

[9] "The explanation lies in the mathematical correspondence between annual interest and annuity payments. $100 due in ten years at 2% is precisely the same thing as an annuity certain of $2 for ten years combined with a promise to pay $100 without interest at the end of ten years. The discounted sums required to meet the annuity payments plus the discounted sum required to pay the $100 when due will always total $100, the amount of the loan. The same holds true if the loan is repayable at the death of the lender. * * * That being so, we can detect no substantial economic distinction between the conjoint effect of the two policies issued, and that of an engagement to repay Mrs. Keller, or her order, $20,000 upon her death, with interest at * * * 2% per annum * * * in the meantime. * * * The annuity * * * is not only a cog but also an indispensible cog in the economic machine which produced the amount received by the beneficiary." *Commissioner* v. *Keller's Estate*, 113 F. 2d 833, 834-835 (C.A. 3d), affirmed, 312 U.S. 543.

LeGierse, supra (p. 542), this was "an investment risk similar to the risk assumed by a bank". See, also, *Conway* v. *Glenn*, 193 F. 2d 965 (C.A. 6th); *Burr* v. *Commissioner*, 156 F. 2d 871 (C.A. 2d), certiorari denied, 329 U.S. 785; *Estate of Reynolds* v. *Commissioner*, 45 B.T.A. 44; *Bank of New York* v. *Kelly*, 135 N.J. Eq. 418; *Day* v. *Walsh*, 132 Conn. 5; Meisenholder, *Taxation of Annuity Contracts Under Estate and Inheritance Taxes*, 39 Mich. L. Rev. 856, 884 (1941). Nor is it realistic to assume that the decedent would have purchased the annuity contract alone, since under its provisions the annual payments ceased at her death and no part of the premium paid would have been refundable in the event that the decedent died immediately after purchasing such contract.[10]

Since the issuance of the life insurance policy was conditioned upon the purchase of the annuity contract (R. 6a), and since the extent of the investment in the annuity was tied to the amount of insurance purchased[11] (R. 11a-12a), it cannot be asserted that the contracts were independent. Such an argument, as the Court of Appeals stated (R. 88), "exalts form over

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[10] Moreover, the annuity contract read together with the insurance contract did not provide for "annuity" payments as that term is generally used and understood, since it entitled decedent merely to a return of interest on her investment and not of principal as well. An annuity "has as its basic function the systematic liquidation" of the principal. Huebner, *Life Insurance*, c. 1, pp. 154-155. "It is well known that an annuity is calculated to yield a recipient who lives out his expectancy a total amount equal to the consideration paid, plus interest thereon." Magill, *Taxable Income* (rev. ed. 1945), p. 433. See also *Igleheart* v. *Commissioner*, 174 F. 2d 605 (C.A. 7th); *Manne* v. *Commissioner*, 155 F. 2d 304, 307 (C.A. 8th).

[11] As noted above (*supra*, p. 4), each insurance policy was issued on the condition that an annuity be purchased in an amount sufficient to yield a combined premium equivalent to 11/10ths of the face value of the insurance policy.

substance in an arrangement where the Supreme Court has specifically directed that the form be ignored." The decedent, without medical examination, could not have given her children the right to receive $350,000 from the insurance companies at her death simply by paying the life insurance premiums aggregating some $314,000. The required annuity contracts, purchased pursuant to the 11/10ths formula (*supra*, p. 4), enabled the insurance companies effectively to neutralize the insurance risk and to assume the payment of the face amount of the policies at death. It was this nexus between the contracts which led this Court to conclude in *LeGierse*, *supra*, that the insurance and annuity contracts must be considered together as a single investment, although neither expressly refers to the other.

B. The Transaction Was Testamentary in Character Notwithstanding the Assignment of the Insurance Policy

Once the transaction in question is viewed as a single investment, as it must be (*Helvering* v. *LeGierse*, *supra*; *Goldstone* v. *United States*, *supra*), the conclusion seems inescapable that the transfer falls within the terms of Section 811(c)(1)(B) of the 1939 Code as a transfer of property in which decedent retained the income for life. As the Court of Appeals stated (R. 88):

> But for the insurance company's guarantee of the payments, it is identical to a transfer in trust with the settlor taking back a beneficial life interest. * * *

And see *Conway* v. *Glenn*, 193 F. 2d 965 (C.A. 6th); *Burr* v. *Commissioner*, 156 F. 2d 871 (C.A. 2d), certiorari denied, 329 U.S. 785; *Estate of Reynolds* v.

Commissioner, 45 B.T.A. 44; *Bank of New York* v. *Kelly*, 135 N.J. Eq. 418; *Day* v. *Walsh*, 132 Conn. 5.[12]

Viewed as a single investment, the effect of the transaction was that the decedent deposited a principal sum with the insurance companies in return for a guaranteed annual income of approximately 2.5 per cent of such sum and for a guaranteed payment of the principal to her beneficiaries at her death. The loading charge imposed over and above the principal amount was the cost to her of the guaranteed annual income and the guaranteed payment at her death, thus protecting her investment from the danger of shrinkage in value of the corpus. *Bank of New York* v. *Kelly*, *supra*, p. 421. The decedent, as the Court of Appeals noted, obtained something more than she could have secured by a transfer in trust with a reserved life interest; she was assured of a stipulated income and a fixed payment of principal to her beneficiaries at death.

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[12] "Payments tantamount to the income from the whole fund deposited were to go to her during her life." *Estate of Reynolds* v. *Commissioner*, *supra*, p. 50. "* * * the investment was analogous to a simple annuity with principal payable at death, a transfer which—even when irrevocable—is taxable under § 811(c)." *Burr* v. *Commissioner*, *supra*, p. 872. "The decedent transferred $110,000 of his assets to the insurance company and thereby obtained the contractual obligation of the company (1) to pay to him the stipulated income to be derived from the entire fund during his life, and (2) upon his death, to pay the fixed sum of the principal to his estate or to his designated beneficiaries. Intrinsically, the transaction is a transfer of the principal sum invested, coupled with a reservation for the benefit of the transferor, of a life interest. * * * Recognizing substance rather than form, the technical use of the two contracts did not disjoint the life interest from the remainder which ultimately was to become the *corpus* of the trust." *Bank of New York* v. *Kelly*, *supra*, p. 421. "The situation * * * approximates that of a trust with income payable to the settlor during his life and the principal payable to certain named persons at his death, * * *." *Day* v. *Walsh*, *supra*, p. 14.

If, instead of embodying these single transactions in separate documents, the decedent had provided in a single contract that she should invest $350,000, exclusive of loading charges, and should receive $8,762.20 annually for life and $350,000 should be payable to her beneficiaries at her death, it would be difficult to imagine a clearer case for the application of the provisions of Section 811(c)(1)(B).[13] A transfer in which the decedent reserves the income from the investment to herself for life, and in which her beneficiaries come into possession or enjoyment of the corpus at her death, is the precise type of testamentary disposition of property which Congress intended should be taxable as part of the estate. *Helvering* v. *Bullard*, 303 U.S. 297; *Hassett* v. *Welch*, 303 U.S. 303. See also *Commissioner* v. *Estate of Church*, 335 U.S. 632; Bittker, *Church and Spiegel: The Legislative Sequel*, 59 Yale L. J. 395 (1950).

The unity of the transaction is not altered by the fact that the decedent assigned the life insurance policy. As this Court pointed out in *Helvering* v. *LeGierse*, *supra*, 312 U.S. at 541, the fact that the policy could be assigned is "immaterial" since the insurance and the annuity contracts "still counteracted each other," no matter who held them. To similar effect, see *Conway* v. *Glenn*, 193 F. 2d 965 (C.A. 6th); *Burr* v. *Commissioner*, 156 F. 2d 871 (C.A. 2d), certi-

[13] The situation in the instant case is not essentially different from that in *Commissioner* v. *Clise*, 122 F. 2d 998 (C.A. 9th), certiorari denied, 315 U.S. 821, and *Mearkle's Estate* v. *Commissioner*, 129 F. 2d 386 (C.A. 3d), where the decedent had purchased, for a single premium, a joint and survivor annuity contract. In both those cases, it was held that the transfer resulted in a retained life income and that the value of the annuity payable to the survivor was includible in the gross estate of the decedent under the statutory provisions corresponding to Code Section 811(c)(1).

orari denied, 329 U.S. 785; *Estate of Reynolds* v. *Commissioner*, 45 B.T.A. 44; *Bank of New York* v. *Kelly*, 135 N.J. Eq. 418; *Day* v. *Walsh*, 132 Conn. 5. Cf. *Mearkle's Estate* v. *Commissioner*, 129 F. 2d 386 (C.A. 3d); *Commissioner* v. *Clise*, 122 F. 2d 998 (C.A. 9th), certiorari denied, 315 U.S. 821.

The assignment of the life insurance policies, which entitled the assignees to receive, at the decedent's death, the amount invested with the insurance companies, did not materially differ from any *inter vivos* transfer, in trust or otherwise, of a remainder interest which will come into possession upon the termination of the life estate. No matter how absolute the transfer of the remainder, the retention of a life interest in the income of the property is sufficient, under the statute, to render the remainder includible for taxation in the decedent's gross estate.[14] Cf. *Peck* v. *United States*, 38 F. Supp. 826 (E.D. Pa.). As the Court below stated it (R. 89):

> In a sense, a life tenant has no ownership right in the remainder. But possession of legal title to the life policy after the assignment is not controlling. All of Section 811(*c*) is plainly directed at inter vivos transfers where title is no longer in the decedent at death. * * *

Although this Court, in *Helvering* v. *LeGierse*, 312 U.S. 531, and *Goldstone* v. *United States*, 325 U.S. 687,

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[14] In *Helvering* v. *Bullard*, 303 U.S. 297, 302, and in *Commissioner* v. *Estate of Church*, 335 U.S. 632, 638, this Court repeated with approval the observation made in *Matter of Keeney*, 194 N.Y. 281, 287, affirmed, 222 U.S. 525, that—

> It is true that an ingenious mind may devise other means of avoiding an inheritance tax, but the one commonly used is a transfer with reservation of a life estate. * * *

determined that the life insurance policy and annuity contract must be regarded as parts of a single investment program, the Seventh Circuit, in *Bohnen* v. *Harrison*, 199 F. 2d 492, affirmed by an equally divided Court, 345 U.S. 946, held that the transaction was divisible, and that the assignment of the insurance policy operated to eliminate the death proceeds from the estate. In so holding, the Seventh Circuit ruled (199 F. 2d at 493) that the fact that the insurance policy would not have been issued without the annuity contract was "without legal significance". Yet, it was this factor which was relied upon in *LeGierse* and in the other cases dealing with combination insurance policies and annuity contracts as requiring a determination that the transaction represented a single investment. The decision in *Bohnen* v. *Harrison, supra*, represents, we believe, an erroneous interpretation of this Court's decisions. For, as stated in *LeGierse* (312 U.S. at 541), the fact that the policy could be assigned is immaterial since the insurance policy and annuity contract still counteract each other no matter who holds them.

The argument advanced by taxpayers leads to the anomalous result that the "insurance" proceeds in question are not includible in the decedent's estate *either* under Section 811(g), as "insurance", *or* under Section 811(c)(1)(B), as property transferred with the life income retained. It is hardly likely that Congress proposed that the same transaction should be treated as a single investment under one subsection (811(g)), but fragmented for the purpose of a cognate subsection (811(c)). Indeed, in the *LeGierse* case, this Court held (p. 542) that the transaction must be viewed as one for purposes of Section 811(c) as well

as Section 811(g). See, also, *Goldstone* v. *United States*, 325 U.S. at 690. Unless the proceeds of the insurance policies are includible in the gross estate under Section 811(c)(1)(B), they would escape estate tax entirely.[15]

C. The Possibility That the Assignees Might Have Surrendered the Policy for Its Cash Value is of no Significance

Taxpayers, throughout their brief, refer to the transaction undertaken by the decedent as a transfer of the cash surrender value of the insurance policy to the decedent's assignees, reasoning that the assignees could have obtained such surrender value at any time. There are at least two independently sufficient reasons why this factor is of no significance.

The first answer is rooted in the actual circumstances

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[15] It is significant that Section 404 of the Revenue Act of 1942, c. 619, 56 Stat. 798, effective with respect to estates of decedents dying thereafter, enlarged the scope of Section 811(g) of the 1939 Code by providing that where a decedent pays the premiums, after January 10, 1941, on a policy of life insurance on his own life, the full amount of the proceeds of the policy is includible in his gross estate even though the policy has been irrevocably assigned during his lifetime and even though the decedent has retained none of the incidents of ownership. H. Rep. No. 2333, 77th Cong., 2d Sess., pp. 162-163 (1942-2 Cum. Bull. 372, 490-492); S. Rep. No. 1631, 77th Cong., 2d Sess., pp. 234-236 (1942-2 Cum. Bull. 504, 676-677); H. Conference Rep. No. 2586, 77th Cong., 2d Sess., p. 69 (1942-2 Cum. Bull. 701, 725).

Section 811(g), however, is applicable only to amounts "receivable * * * as insurance" and *Helvering* v. *LeGierse*, *supra*, has determined that combination contracts of the type here involved are not insurance, but are taxable under the predecessor of Section 811(c). The result of the decision in *Bohnen* v. *Harrison*, *supra*, which held that, despite *LeGierse*, a separate contract of insurance is involved under Section 811(c)(1)(B), will be to permit such transfers to remain free from tax, under either subsection, in the period 1942-1949. Under that decision, therefore, a decedent purchasing insurance need only purchase an annuity contract as well to avoid estate tax.

of this case. The decedent's assignees never surrendered the insurance policies, but retained them until maturity and collected the full face amount of such policies. This was in accord with the manifest intention of the decedent. As has been noted, she paid a total of $384,000 in premiums for the insurance policies and annuity contracts in question. After deducting loading charges, the net investment was $350,000, the face amount of the policies. This was the sum which she intended to transfer to her assignees, as is apparent from the fact that she retained no interest in the principal sum, but a right to a fixed income therefrom at the rate of approximately 2.5 per cent.

The true nature of this type of transaction was accurately described in *Burr* v. *Commissioner*, 156 F. 2d 871 (C.A. 2d), certiorari denied, 329 U.S. 785, as follows (p. 872):

> When the decedent in this case transferred $107,500 to the insurance company, he obtained from it two promises: one to pay him a small rate of return in the form of monthly annuity payments, the other to transfer $100,000 to the named beneficiaries on his death. His annuity payments represented a fixed percentage of the total consideration; and the company's investment risk was so calculated as never to exceed the expected income from the premiums on the insurance and the annuities. * * *[16]

[16] Although the District Court found that dividends were paid to the assignees on two of the policies (R. 9a), there is nothing in the record to show what amount, if any, was so paid, and consequently nothing which would justify an allocation of the total death proceeds on the basis of a comparison of the dividends received by the assignees to the annuity received by the decedent. The burden of proving a basis on which such an allocation could fairly be made rested, of course, on taxpayer. *Interstate Transit Lines* v. *Commissioner*, 319 U.S. 590, 594.

It offends common sense to suppose that the decedent intended to transfer only the cash surrender values of the insurance policies. Immediately after issuance, the policies had a cash surrender value of $289,324 (R. 10a); on July 6, 1938, this value was $300,620 (R. 10a); and, immediately prior to the decedent's death, this value had increased to the sum of $326,249 (R. 11a). It is completely unrealistic to assume, as taxpayers do (Br. 9), that the decedent invested $384,000 to assure her beneficiaries of a cash surrender value of $289,324 in 1934, or $300,620 in 1938, or even $326,249 in 1946. If the decedent had intended to make an immediate gift of any of those amounts to her children, she would hardly have done so in such manner, nor would she have compelled her children to forego rights to a larger amount (the face value) in order to realize the "intended" gift. Viewing the transaction in its entirety, it is apparent that the decedent placed her money in an investment fund with the insurance companies in order to obtain a fixed income for her life with the principal to be paid to her children at her death. The transaction was aptly described in *Bank of New York* v. *Kelly*, 135 N.J. Eq. 418, as follows (pp. 422-423):

> In view of the conservative reason for the investment, it seems fantastic to suppose that a cancellation of the policy by Mrs. Parish during the lifetime of the insured at its surrender value was regarded by either as probable. If the decedent had intended to make a complete, absolute, and immediately effective gift, why would he resolve to invest a material portion of his estate in such a manner that an enjoyment of it by the donee before his death would necessitate the loss incident to the surrender of the policy. *Guggenheim* v. *Rasquin*, 312 U.S. 254, 257. Cash or securities

could well have been deposited in the trust instead of a single-premium life insurance policy payable upon the event of death and having a surrender value based on a mortality table.

Taxpayers state that the situation herein is analogous to the purchase by decedent of a government bond for $900, which attains its face value of $1,000 in twelve years by the accumulation of interest, and maintain that, if such a bond was given to a child of the decedent, the child could forego the $1,000 and cash the bond for $900. (Br. 15.) The illustration is singularly inapposite. The decedent in such case has expended only $900, and her donee is in a position to realize the full amount expended at once. With respect to the insurance policies here in question, on the other hand, the decedent's donees are not in a position to realize the full amount expended until the decedent's death. If the donees of the insurance policies had sought to reduce the policies to cash at once, the amount realized would have been substantially less than the amount just expended by the decedent to purchase the policies.

The fact that the donees, in the case of the bond, could realize the value of the gift immediately, while the donees of the insurance policies could not, serves only to highlight the crucial fact that the decedent did not intend to make an immediately effective gift. As is well recognized, the cash surrender value of a life insurance policy is scarcely the full measure of its worth. *Guggenheim* v. *Rasquin*, 312 U.S. 254. By adopting the medium that she did, the decedent clearly manifested her intention to transfer to her children the face amount of the insurance policies payable at her death while she retained the income for life.

Since the assignees could only obtain a lesser amount, *i.e.*, the cash surrender value of the policies, during the decedent's lifetime, and the larger amount was payable only upon her death, the transactions in question do not meet the test which this Court established in *Commissioner* v. *Estate of Church*, 335 U.S. 632, where it was stated (p. 646):

> In other words such a transfer must be immediate and out and out, and must be unaffected by whether grantor lives or dies. * * *

A second and complete answer is provided by the language of Section 811(c)(1)(B) of the 1939 Code. That section, in terms, applies not only to situations in which income from property has been retained for the life of the decedent, but also to situations where the income has been retained "for any period which does not in fact end before his death * * *." Section 811(c)(1)(B) thus looks to the facts actually existing at the time of death, not to what might have occurred during life. See *Goldstone* v. *United States*, 325 U.S. 687, 693. The same test was applied in taxing the decedent's interest in a joint tenancy under a predecessor of Section 811(e). *United State* v. *Jacobs*, 306 U.S. 363, 371.

Looking to the facts as they existed at decedent's death, it is conceded that the policy was not surrendered by her assignees during her life. Decedent continued to receive the income from her investment for her life and her children received the full sum payable on the policies at her death. The unexercised power of surrender "did not change the factual realities of the transaction." *Burr* v. *Commissioner*, 156 F. 2d 871, 872 (C.A. 2d), certiorari denied, 329 U.S. 785. The

present situation does not materially differ from that of a trust whereby the income is payable to the settlor for life and the remainderman is afforded the privilege, before the settlor's death, of withdrawing part of the principal in full satisfaction of his remainder interest. If the remainderman does not exercise his privilege, it is apparent that property is transferred at death on which income has been reserved to the decedent for life. Property transferred in such manner is plainly includible in the decedent's gross estate under Section 811(c)(1)(B).

Taxpayer's entire argument proceeds on the hypothesis, repudiated by this Court in *LeGierse* and *Goldstone*, that decedent's conjoined insurance-annuity purchase is to be treated as two separate and unrelated purchases, and that the total premium should be allocated as between the insurance and annuity features. What is more, taxpayers here would re-allocate even that portion of the total premium ascribed to the insurance contract, dividing it between the cash surrender value portion and the portion represented by the excess of face value over cash surrender value. There is no basis in fact or in law for any such segregation. The insurance proceeds paid at decedent's death represented nothing more nor less than repayment of the principal amount (single premium) invested by decedent with the insurance company for the combined insurance-annuity contract. The annuity which decedent received during her lifetime represented the interest on that investment. It follows that the entire amount of the investment, repaid at her death in the form of the insurance proceeds, constituted property transferred by the decedent during her lifetime but in which she "retained" for a "period

which [did] not in fact end before [her] death * * * the right to the income." Section 811(c)(1)(B).

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

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